S. Hrg. 98-1028

S. 2823—S. 2824—S. 2862

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2823

TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS APPROPRIATED IN SATISFACTION OF JUDGMENTS AWARDED TO THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN IN DOCKETS NUMBERED 59 AND 13E BEFORE THE INDIAN CLAIMS COMMISSION AND DOCKET NUMBERED 13F BEFORE THE UNITED STATES CLAIMS COURT, AND FOR OTHER PURPOSES

S. 2824

TO PROVIDE FOR THE USE AND DISTRIBUTION OF CERTAIN FUNDS AWARDED THE WYANDOTTE TRIBE

S. 2862

TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE COCOPAH INDIAN TRIBE

AUGUST 6, 1984
WASHINGTON, DC

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S. 2823—S. 2824—S. 2862

AUGUST 6, 1984

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:08 a.m., in room SR–428, Russell Senate Office Building, Hon. Dennis DeConcini (acting chairman of the committee) presiding.

Present: Senator DeConcini.

Staff present: Paul Alexander, staff director; Peter S. Taylor, general counsel; Max Richtman, minority staff director; Michael Mahsetky, staff attorney; June Tracy, legislative aide; and Lynn Toledo, secretary.

Senator DECONCINI. The Select Committee on Indian Affairs hearing will come to order.

This morning the Select Committee on Indian Affairs will receive testimony on three bills before us. We will start with S. 2862, the Cocopah Land Transfer bill before proceeding with S. 2823, the Saginaw Tribal Distribution bill and S. 2824, the Wyandotte Tribal Distribution bill.

I introduced S. 2862 to provide the Cocopah Tribe with 3,930 additional acres of trust land. The 1,772-acre reservation which the tribe now has is being utilized to its maximum capacity. Many of the reservation residents now live in substandard homes on less than 300 acres and are in need of permanent housing. S. 2862 will provide an additional 3,900 acres suitable for residential use by the Cocopah tribal members.

The tribe's only revenue is income derived from 800 acres of agricultural land. Under the proposed transfer, the tribe can realize increased revenue by being able to expand its agricultural lands by as much as 500 acres at a minimum.

All of this is essential to a tribe which sees its population growing and wants to improve substantially the standard of living of its people. It is clear that the additional land will quicken the speed with which the Cocopah Tribe can move toward meeting the need for housing, broadening its economic base, and providing a living area proportional to its population requirements.

Today we will hear from the Cocopah Tribe and the Department of Interior. I am aware of concerns which are being voiced locally in Yuma and am prepared to reopen the hearing record at a later time for additional testimony should it be necessary to do so. Because I am aware of the great lengths to which the tribe went to advise all agencies and other third parties of their proposal, I expect that they will reach some reasonable accommodation with any other parties, who may still have some concerns at this time, in the next few weeks after they return to Arizona.

I am going to ask that this hearing be left open for 30 days so that any testimony that would like to be submitted by other parties or additional testimony by those who are witnesses today can be so submitted.

At this point, without objection, I will place a copy of S. 2823, S. 2824, and S. 2862 in the hearing record.

[The bills follow:]

II

98TH CONGRESS
2D SESSION

S. 2823

To provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 59 and 13E before the Indian Claims Commission and docket numbered 13F before the United States Claims Court, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1984

Mr. RIEGLE (for himself and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 59 and 13E before the Indian Claims Commission and docket numbered 13F before the United States Claims Court, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; DEFINITIONS

SECTION 1. (a) This Act may be cited as the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

(b) For purposes of this Act—

(1) the term "tribe" means the Saginaw Chippewa Indian Tribe of Michigan;

(2) the term "Tribal Council" means the Saginaw Chippewa Tribal Council;

(3) the term "Secretary" means the Secretary of the Interior; and

(4) the term "Fund" means the Principal Investment Fund established in accordance with section 3.

ABROGATION OF PRIOR PLAN

SEC. 2. Notwithstanding the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401 et seq.) or any plan prepared or regulation promulgated by the Secretary pursuant to such Act, the funds—

(1) appropriated in satisfaction of judgments awarded the Saginaw Chippeaw Indian Tribe of Michigan in dockets numbered 59 and 13E before the Indian Claims Commission and docket numbered 13F before the United States Claims Court (other than funds appropriated for the payment of attorney fees or litigation expenses), and

(2) held in trust by the Secretary for the use and benefit of the tribe,

and any interest or investment income accrued or accruing (on or before the date of the transfer pursuant to section 4) on the amount of such judgments shall be distributed and used in the manner provided in this Act.

PRINCIPAL INVESTMENT FUND

SEC. 3. (a) The tribe, through the Tribal Council, is hereby authorized to establish a fund which shall be known as the "Principal Investment Fund". The principal of the Fund shall consist of—

(1) the funds transferred by the Secretary to the Tribal Council pursuant to section 4(a),

(2) the amounts required to be included in principal under subsection (c), and

(3) such amounts of the net income of the Fund which the Tribal Council may elect to retain and add to principal.

The Fund shall be held in trust by the Tribal Council for the benefit of the tribe and administered in accordance with this Act.

(b) The income from the Fund shall be used exclusively for investments (including loans to enrolled members of the tribe or for expenditures which the Tribal Council determines are reasonably related to economic development beneficial to the tribe or enrolled members of the tribe or the development of tribal resources.

(c) At least 10 per centum of the net income of the Fund for each of the first ten fiscal years of the Fund beginning after such Fund is established shall be retained in the Fund and included in principal.

(d)(1) The Fund shall be maintained as a separate book account.

(2) The books and records of the Fund shall be audited at least once during each fiscal year of the Fund (or before the end of the three-month period beginning on the last day of such fiscal year) by an independent certified public accounting firm which shall prepare a report on the results of such audit. Such report shall be treated as a public document of the tribe and a copy of the report shall be available for inspection by any enrolled member of the tribe.

TRANSFER OF FUNDS BY THE SECRETARY TO THE PRINCIPAL INVESTMENT FUND

SEC. 4. (a) Before the end of the sixty-day period beginning on the date the Secretary receives notice of the adoption by the Tribal Council of a resolution (in accordance with the constitution and by-laws of the tribe)—

(1) establishing the Fund, and

(2) authorizing the Secretary to distribute the funds described in section 2 to the tribe for deposit in the Fund,

the Secretary shall transfer such funds to the Tribal Council for deposit in the Fund.

(b)(1) Except as provided in paragraph (2) and notwithstanding any other provision of law, the approval of the Secretary for any payment or distribution from the Fund, after the transfer of funds pursuant to subsection (a), shall not be required and the Secretary shall have no further trust responsibility for the investment, supervision, administration, or expenditure of such funds.

(2) The Secretary may take such action as he may determine to be necessary and appropriate to enforce the requirements of this Act.

TREATMENT OF AMOUNTS PAID OR DISTRIBUTED FROM THE FUND

SEC. 5. No amount of any payment or distribution from the Fund in accordance with section 3 shall be included in gross income of the payee or distributee, to the extent such payee or distributee is an enrolled member of the tribe, for purposes of any Federal or State income tax. Payments or distributions from the Fund, or the availability of any amount for payment or distribution from the Fund, may not be considered as income or resources or otherwise used as the basis for denying or reducing—

(1) any financial assistance or other benefit to which any enrolled member of the tribe, or the household of any such member, is otherwise entitled or for which such member or household is otherwise eligible under the Social Security Act, or

(2) any other Federal financial assistance, Federal benefit, or benefit under any program part or all of the funding for which is provided by the Federal Government to which such member or household is otherwise entitled or for which such member or household is otherwise eligible.

○

II

98TH CONGRESS
2D SESSION

S. 2824

To provide for the use and distribution of certain funds awarded the Wyandotte Tribe.

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1984

Mr. NICKLES introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of certain funds awarded the Wyandotte Tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of the judgments granted the Wyandotte Tribe in—

(1) docket No. 139 of the Indian Claims Commission,

(2) docket No. 141 of the United States Court of Claims, and

(3) docket Nos. 212 and 213 of the United States Claims Court,

less attorney fees and litigation expenses, shall be used and distributed as provided in this Act.

SEC. 2. (a) The roll of the members of the Wyandotte Tribe of Oklahoma shall be updated by such Tribe to, and including, the date of enactment of this Act in accordance with procedures adopted by the tribal governing body and approved by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary").

(b)(1) The Secretary shall prepare a roll of all individuals who—

(A) were born on, or prior to, the date of enactment of this Act,

(B) are alive on the date of enactment of this Act, and

(C) are listed in, or are lineal descendants of individuals listed in, the "Census of Absentee or Citizen Wyandotte Indians" compiled by Joel T. Olive and dated November 18, 1896 (as corrected by W. A. Richards, Commissioner of the General Land Office, in a circular dated October 28, 1904).

(2) Applications for enrollment of individuals under paragraph (1) may be filed with the Secretary by no later than the date which is 180 days after the date of enactment of this Act.

(3)(A) The Secretary shall determine whether an individual is eligible to be enrolled under paragraph (1). Such determination shall be final and shall not be reviewable in any court.

(B) Any review by the Secretary of an initial determination of the Secretary with respect to enrollment of an individual under paragraph (1) shall not delay the allocation made under section 3 or any distribution made under sections 4 or 5.

(4) The Secretary shall publish in the Federal Register and in appropriate local media notice of—

(A) the provisions of this Act that provide for a per capita distribution to Absentee Wyandottes and their descendants,

(B) the preparation of the roll described in paragraph (1), and

(C) the procedures for filing applications for enrollment on such roll and the final date on which such applications may be filed with the Secretary.

SEC. 3. By no later than the date which is 90 days after the later of—

(1) the date on which the update of the roll described in section 2(a) is completed, or

(2) the date on which the roll prepared by the Secretary under section 2(b) is completed,

the Secretary shall allocate the funds described in the first section (including all interest and investment income accrued thereon) between the Wyandotte Tribe of Oklahoma and the Absentee Wyandottes (as a group) in proportion to the number of individuals listed on such rolls who were born on, or prior to, the date of enactment of this Act, and are alive on such date.

SEC. 4. The funds allocated to the Absentee Wyandottes and their descendants under section 3 (including all interest and investment income accrued thereon) shall be distributed in the form of per capita payments, in sums as equal as possible, to each individual listed on the roll prepared under section 2(b).

SEC. 5. (a) Eighty percent of the funds allocated to the Wyandotte Tribe of Oklahoma under section 3 (including all interest and investment income accrued thereon) shall be distributed in the form of per capita payments, in sums as equal as possible, to each member of such Tribe who—

(1) was born on, or prior to, the date of enactment of this Act, and

(2) is alive on such date.

(b) Twenty percent of the funds allocated to the Wyandotte Tribe of Oklahoma under section 3 (including all interest and investment income accrued thereon) shall be used in accordance with the following general plan:

(1) $100,000 of such funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of such Tribe,

(2) the portion of such funds in excess of $100,000 shall be held in trust by the Tribal Business Committee of such Tribe for the benefit of such Tribe, and

(3) the interest and investment income accruing on the portion of funds described in paragraph (2) may be used by the Tribal Business Committee of such Tribe, for the benefit of such Tribe, for—

(A) education of the members of such Tribe (including provision of grants-in-aid and scholarships),

(B) medical or health needs of the members of such Tribe (including prosthetics),

(C) economic development of such Tribe,

(D) land purchases for such Tribe,

(E) investments for such Tribe,

(F) tribal cemetery maintenance,

(G) tribal building maintenance, and

(H) tribal administration.

SEC. 6. (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this Act shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this Act shall be paid, and the beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or a minor is entitled under this Act shall be paid in accordance with the provisions of section 3(b)(3) of Public Law 93-134.

SEC. 7. None of the funds distributed per capita under this Act or made available under this Act for programs shall—

(1) be subject to Federal, State, or local income taxes, or

(2) be considered income or resources in determining either eligibility for, or the amount of assistance under—

(A) the Social Security Act, or

(B) in the case of any per capita share of $2,000 or less, any other Federal, State, or local programs.

SEC. 8. Public Law 97-371 is hereby repealed.

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II

98TH CONGRESS
2D SESSION

S. 2862

To declare that the United States holds certain lands in trust for the Cocopah Indian Tribe.

IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, JULY 23), 1984

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To declare that the United States holds certain lands in trust for the Cocopah Indian Tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subject to the provisions of subsection (b), all rights, title, and interests of the United States in the following lands (including all improvements thereon and appurtenances thereto) located in Yuma County, Arizona, are hereby declared to be held by the United States in trust for the benefit and use of the Cocopah Tribe and are hereby declared to be part of the reservation of the Cocopah Tribe:

(1) As part of the West Cocopah, Gila and Salt River Base and Meridian, Arizona, containing 1,784 acres more or less:

T.9S, R.24.W.
Sec. 18: lot 17
Sec. 19: lots 24, 25
Sec. 30: lots 19, 25
T.9S, R.25.W.
Sec. 24: lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
Sec. 34: lots 1, 2
Sec. 35: all within the United States; and
T.10S, R.25.W.
Sec. 2: lots 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27
Sec. 10: lots 1, 2
Sec. 11: lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
Sec. 14: lots 8, 9
Sec. 15: lots 5, 6, 7.

(2) As part of East Cocopah, Gila and Salt River Base and Meridian, Arizona, containing 1,570 acres more or less:

T.9S, R.23.W.
Sec. 30: within S/2 along bluff, excluding, lot 5, approximately 50+ acres
Sec. 31: NW/4 160+ acres
NE/4 160+ acres
W/2, SW/4 80+ acres
N/2, E/2, SW/4 40+ acres
W/2, SE/4 80+ acres
N/2, E/2, SE/4 40+ acres; and
T.10S, R.24.W.
Sec. 1: E/2 meandering along east main canal approximately 320+ acres
Sec. 12: NW/4 meandering along east main canal approximately 60+ acres
NE/4 160 acres
E/2, SE/4 80 acres
Sec. 13: E/2, NE/4 80 acres
SE/4 160 acres
S/2, SW/4 meandering along east main canal approximately 80+ acres.

(3) As North Cocopah, San Bernardino Base and Meridian, Arizona, containing 576 acres more or less:

T.16S, R.21.E.
Sec. 25: lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17
Sec. 24: lot 1; and
T.16S, R.22.E.
Sec. 19: lots 11
Sec. 30: lots 11, 12, 13, 19, 20, 22, & S 1/2, SW 1/4.

(b) Nothing in this Act shall deprive any person of any right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the lands described in subsection (a) on the date preceding the date of enactment of this Act.

(c) Notwithstanding any other provision of law, the provisions of Executive Order 11988 (42 U.S.C. 4321, note) shall apply to the lands described in subsection (a).

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Senator DECONCINI. We will now proceed with the first witness on S. 2862, Mr. Terry Cooper, staff assistant, Land Resources Management, Bureau of Reclamation, Department of the Interior.

Mr. Cooper, we welcome you this morning.

STATEMENT OF TERRY COOPER, STAFF ASSISTANT, LAND RESOURCES MANAGEMENT, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. COOPER. Thank you, Mr. Chairman.

Good morning to you and the members of the committee. I am pleased to be here today to offer testimony on Senate bill 2862: "To declare that the United States holds certain lands in trust for the Cocopah Indian Tribe."

We oppose enactment of S. 2862. The lands described in S. 2862 to be transferred to the Cocopah Indian Tribe consist entirely of lands which are withdrawn from the public domain or acquired from private owners by the Bureau of Reclamation. They are used in conjunction with the operation and maintenance of various features of the valley division of the Yuma project, the Colorado River Front Work and Levee System project, and the Colorado River Basin Salinity Control project. First and foremost, the lands are necessary for continued operation and maintenance.

S. 2862 would declare that the United States holds certain lands in Yuma County, AZ in trust for the Cocopah Indian Tribe. The bill would add 3,930 acres to the 1,772 acres which presently make up the Cocopah Indian Reservation.

The reservation currently consists of two separated parcels. S. 2862 would not consolidate these Cocopah lands but would expand the two existing separated parcels and add an additional north parcel. The Cocopah Indian Tribe met with the Bureau of Land Management on this matter in September 1983 and stated that it wanted these additional lands in order to augment its present land base to provide substantial commercial, industrial, recreational, and agricultural development for the tribe. We would be willing to have the Department continue discussions for transfers pursuant to the Federal Land Policy and Management Act.

We object to the enactment of S. 2862 for several reasons. The lands concerned are presently being managed for multiple uses, including flood zones, wildlife habitats, agricultural leases, and mineral leasing. Many of these uses might be adversely affected by transferring the lands to the tribe. We appreciate that the tribe would like to acquire an expanded land base. However, we find no compelling reason for this special legislation and can find no legal or equitable basis for this extension of tribal lands.

The lands are included in an existing management framework plan, resource management plan, and habitat management plan. Close coordination with the International Boundary and Water Commission, Border Patrol, and U.S. Bureau of Reclamation is stressed for aiding border operation and maintaining the flood plain free of obstructions. In addition, much of the acreage in the north and west parcels is under agricultural leases. These lands are also blanketed by oil and gas lease applications and are classified as prospectively valuable by the U.S. Geological Survey.

I have submitted a list of leases, licenses, permits, dedications, or other outgrants by Reclamation which may not have been entered upon the Bureau of Land Management's records which are also valid existing rights.

This ends my prepared statement, and I would be glad to answer any questions.

Senator DECONCINI. Thank you very much, Mr. Cooper.

I have a few questions. First, in reviewing the list of rights-of-way and withdraws which you have submitted to us, we find some major facilities were eliminated from the proposed transfer so will not be affected by the bill on the list. Let me give you an example: Why does your list include the proposed headquarters site for the Yuma Valley Water Users Association, cited under item number one; and facilities consisting of an association employee's home and garden cited under item number one, section 30? Is the Bureau aware that the tribe and the association, by mutual agreement, dropped these two sites from the proposed transfer?

Mr. COOPER. These were listed in section 30 of T. 9 S., R. 23 W. and were picked up by the project office as being on the list and listed as part of the area to be transferred.

Senator DECONCINI. So, you did not know that they had been mutually excluded.

Mr. COOPER. No, we did not know that they had been excluded.

Senator DECONCINI. Well, we would like you to take note of that, please, and of course if that alters in any way your testimony, we would appreciate an amendment to that testimony, or if it does not, we would just like to be sure that you are aware of it.

Other lands not included in the transfer on your list, like the State land listed as item number 5, or the land listed under items 6, 7, and 8; why are these lands not included?

Mr. COOPER. Perhaps they were State lands. We were listing only the ones that were under the jurisdiction of the Bureau of Reclamation and the Department of the Interior.

Senator DECONCINI. In 1982, some of these same lands selected by the tribe were publicly posted as being made available for transfer to the State of Arizona. After the tribe advised the State of its interest in acquiring the land, I understand that the State, without objection, withdrew its application for the lands. I am told that the Bureau did not express any public objection to the State application. Is that correct and, if so, why?

Mr. COOPER. These would have been in lieu lands in which we had withdrawal and we would have revoked the withdrawal and retained the rights necessary to protect the project features and our uses of those lands for project purposes.

Senator DECONCINI. So, they would have been transferred to the State with some restrictions.

Mr. COOPER. With restrictions, yes.

Senator DECONCINI. What do those restrictions amount to, just in general terms. Can you give me any idea?

Mr. COOPER. They would be the right of ingress and egress, of storage of materials, the right to do any action that would be necessary to protect the streambanks, construct the levee works, do channel modification, or whatever was necessary in line with any of the projects.

Senator DECONCINI. If those restrictions were to be imposed on this transfer and this transfer took place, or was proposed in that manner, would that make any difference to the Bureau as far as supporting the transfer?

Mr. COOPER. Not as far as those particular lands were concerned. This is one of the things I think can be worked out locally to make the whole transfer acceptable, if we can come up with some specific guarantees on the ground prior to the passage of legislation, that would guarantee and satisfy any concerns. I think this could be worked out at the local level between the tribe and our project office or other Interior representatives.

Senator DECONCINI. I take it from that that your main objection here is the fact that under S. 2862 you feel you would have no access for what you believe would be necessary improvements or storage of materials, or what have you, for the river.

Mr. COOPER. We feel it is entirely possible, and in order to avoid any hard feelings after the fact, we would prefer to see this worked out prior to passage so that when it all came out, it would be all clear and open and aboveboard and create no hard feelings in the future.

Senator DECONCINI. If that were negotiated, where the Bureau maintains some access for proper management of the river, would your objections still be there, or would they be less?

Mr. COOPER. Well, I cannot speak unequivocally for the Department without having a review by the other agencies involved, but I feel that this would probably lessen the objection.

Senator DECONCINI. That is the root of the objection?

Mr. COOPER. Yes. The Department is not against the enlargement of the Cocopah Reservation per se. It is just the particular lands that were covered in this particular bill.

Senator DECONCINI. Our legislation does point out, and I call your attention to page 3, line 1(b):

> Nothing in this Act shall deprive any person of any right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the lands described in subsection (a) on the date preceding the date of enactment of this Act.

I take it that that is not sufficient from your standpoint of being able to feel that the Bureau would have adequate access.

Mr. COOPER. No, Senator, we interpreted that as being aimed primarily at the rights of the private individuals who had been issued mining claims and patent claims on those lands for minerals and other privileges.

Senator DECONCINI. I see. So, you would need something more specific relating to the Bureau.

Mr. COOPER. Yes.

Senator DECONCINI. Thank you.

In 1983, several thousand acres of land, some of which were contiguous to the lands proposed for transfer were patented to the State of Arizona by the Bureau of Land Management without proper protection of existing facilities and rights-of-way for the Yuma Valley Water Users Association. These are the same lands which were previously withdrawn in the early 1900's for the Yuma project but never used for the project. Would the Bureau of Reclamation and the BLM cooperate with the Water Users Association in having proper rights-of-way filed for existing facilities prior to adoption of this legislation?

Mr. Cooper. Yes, sir; we would.

Senator DeConcini. Thank you. That would be very helpful.

Are you aware of any lands that have been transferred to any Indian tribe under the Federal Land Policy and Management Act?

Mr. Cooper. No, sir; but I could look into it and provide that information for the record.

Senator DeConcini. Would you please?

Mr. Cooper. Yes.

[Subsequent to the hearing the following information was received for the hearing record.]

No. The Bureau of Land Management has never transferred lands to an Indian tribe under the Federal Land Policy and Management Act.

Senator DeConcini. We would also like to know whether or not it was transferred into trust or into fee title.

Mr. Cooper. All right.

Senator DeConcini. Is it true that the Colorado River Front Work and Levee System as well as the Colorado River Basin Salinity Control project already across the existing reservation?

Mr. Cooper. Yes, I believe they do.

Senator DeConcini. Does the Cocopah Tribe have a good working relationship with the Bureau regarding this? Do you know of any problem?

Mr. Cooper. I do not know of any problems, and I could not find any problems from the project office. But there is always that potential and it is better to prevent problems than to try to correct them at a later date.

Senator DeConcini. You have not had any but you want to be sure that we do not have any.

Mr. Cooper. Yes; we would like to retain the good working relationships we have with the tribe at this time, and I think the best way to do it is to make sure that our fences are in order before we go into it.

Senator DeConcini. I think that is a reasonable approach, Mr. Cooper, and I thank you for your testimony. Does staff have any questions they would care to ask?

Mr. Alexander. No, thank you, Mr. Chairman.

Senator DeConcini. Thank you very much, Mr. Cooper.

Mr. Cooper. Thank you.

[Material submitted by Mr. Cooper follows:]

		Reference Drawing No.
1. East Cocopah		
T. 9 S., R. 23 W., G&SRM, Arizona		423-303-675
section 30:	(1) Yuma Mesa Conduit	
	(2) YCWUA Proposed Headquarters site	
section 31:	(1) Yuma Mesa Conduit	
	(2) Well (YM-6)	
	(3) Well (YM-7)	
	(4) Airstrip Lease (E½E½W½NW¼)	
T. 10 S., R. 24 W., G&SRM, Arizona		423-303-680
section 1:	(1) Yuma Mesa Conduit	
	(2) Powerline	
	(3) Well (YM-8)	
	(4) Lease for Refuse Disposal Site (W½SE¼)	
	(5) Dedication to Yuma County - Refuse Disposal Site (W½NE¼)	
section 12:	(1) Yuma Mesa Conduit	423-303-679
	(2) Powerline	
	(3) Well (YM-9)	
section 13:	(1) Yuma Mesa Conduit	423-303-678
	(2) Powerline	
	(3) Well (YM-10)	
West Cocopah		
T. 9S., R. 24 W., G&SRM, Arizona		423-303-471
section 18:	(1) Yuma Valley Levee	
	(2) Bypass Drain	
section 19:	(1) Yuma Valley Levee	35-303-1470
	(2) Bypass Drain	
section 30:	(1) Irrigation facilities	35-303-634
T. 9 S., R. 25 W., G&SRM, Arizona		35-303-1470
section 24:	(1) Yuma Valley Levee	
	(2) Bypass Drain	
T. 10 S., R. 25 W., G&SRM, Arizona		35-303-1473
section 2:	(1) Yuma Valley Levee	
	(2) Bypass Drain	
section 11:	(1) Yuma Valley Levee	35-303-1474
North Cocopah		
T. 16S., R. 21 E., SBM, Arizona		998-303-679
section 25:	Main Outlet Drain Extension	

Jurisdiction of lots 5 and 6, section 26, was transferred to the Bureau of Indian Affairs by Memorandum of Agreement dated January 16, 1956, subject to certain rights, including Reclamation's right to construct, operate, and maintain works.

Reference Drawing No.

2. T. 10 S., R 24 W., G&SRM, Arizona, sections 12 and 13. A 15-foot easement which traverses along the north and south midsection line for a 4.16-kV transmission line, Reference Drawings Nos. 423-303-678 and 423-303-679.

3. Reclamation's rights retained to reenter, reconstruct, operate, and maintain a replacement drain along the abandoned Cocopah Drain.

4. T. 9S., R. 23 W., G&SRM, Arizona 35-303-631
section 32, SW1/4SW1/4-Yuma County Water Users' Association headquarters site

South 50 feet of the SE1/4SW1/4-access road and future transmission line easement

section 31--North 50 feet of the N1/2N1/2-access road and proposed transmission line easement

5. T. 9 S., R. 24 W., G&SRM, Arizona 35-303-632
section 36, East Main Canal

section 30, West Main Canal 35-303-634
Walton Lateral--50 feet
Halladay Lateral--100 feet
Pesch Lateral--75 feet

6. T. 9 S., R. 25 W., G&SRM, Arizona 35-303-635
section 36, SE1/4SE1/4, West Main

7. T. 10 S., R 25 W., G&SRM, Arizona 35-303-635
section 1, NW1/4SW1/4, West Main
section 2, SE1/4, West Main
section 11, E1/2E1/2, West Main

8. T. 10 S., R. 24 W., R&SRM, Arizona 35-303-637
section 1, SE1/4, East Main
SE1/4SW1/4, East Main
section 12, E1/2NW1/4, East Main
W1/2SE1/4, East Main
West 100 feet of SE1/4 transmission line rights-of-way, that is in the NE1/4 and the northwest NWSE1/4

Mumm Lateral, SW1/4NE1/4 35-303-639
West 100 feet of NE1/4 transmission line rights-of-way
S1/2SW1/4--material site

Senator DECONCINI. Next, we will hear from Fred Miller, the chairman of the Cocopah Tribal Council and also Eric Dahlstrom, their attorney.

Mr. Chairman, your full statement will be submitted for the record. If you would like to review or summarize it, please proceed.

STATEMENT OF FRED MILLER, CHAIRMAN, COCOPAH TRIBAL COUNCIL, ACCOMPANIED BY ERIC DAHLSTROM, ATTORNEY FOR THE COCOPAH TRIBE

Mr. MILLER. Thank you. Thank you for having this hearing on S. 2862 which will be an historic step for the Cocopah.

I have given you my written statement. I would like to make a few comments. In addition, I have with me today Eric Dahlstrom, counselor to the tribe, who will also make a statement. We also have a tribal planner who is available to answer any questions you might have.

I wanted to tell you a little about the Cocopah, because our history is why we believe we should get this land. We have always lived along the Colorado River, but we have been ignored by the Federal Government. Our reservation was created in 1917, but our people did not even know it. Only a handful of the Cocopah were allowed to enroll.

We lived on the ditch banks, on local farms we helped to build. We had no organized tribal government and no BIA service. We had a tribal chief who did not want to be involved with the BIA.

It was not until I was in the service in World War II that I learned that the Government helped Indian people. When I returned to Yuma, I was denied medical service by the Indian hospital. The Cocopah were not enrolled and were said to be Mexican and not eligible for BIA services.

It was not until 1964 that we organized a constitution under the Indian Reorganization Act of 1934 and the BIA started to provide us service. We still made very little progress, until the 1970's, when Look Magazine did some special reports on the Cocopah and called them the poorest Indian tribe in the United States. After that, our tribe got some help from churches and other organizations.

Now, we are building our own government. We have had our share of problems, but we are making progress. Our finances have improved. We are arranging our own program. We are setting up our tribal court. We are looking for economic development. With the addition of the land, we will have a chance to build for the future.

Many tribes have had modern tribal government for many years. Many tribes got additional land, large claim settlements, many years ago. We were just overlooked in those days. Now we are asking for a small chance. We know we can put these lands to good use. We have such a small amount of land. We appreciate the land and we will use it well.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF FRED MILLER, SR., CHAIRMAN OF THE COCOPAH TRIBE

My name is Fred Miller, Sr., Chairman of the Cocopah Tribe of Somerton, Arizona. The Cocopah occupy a very small reservation southwest of Yuma, Arizona, located along the Colorado River on that small piece of Arizona which is south of California bordering Mexico.

The Cocopah have occupied the lower reaches and delta of the Colorado River since time immemorial. We have always looked to the Colorado River for our survival.

Our homeland was first visited by Spanish explorers, Franciscan missionaries and Mexican settlers. Our territory was purchased by the United States Government in the Gadsden Purchase in 1853. After the purchase, our people were divided between Mexico and the United States. In 1917, to clear the way for the farmers to irrigate and develop the Yuma Valley, the Cocopah were given two very small reservations just ouside the borders of the Yuma Irrigation project.

From 1917 until the late 1960's the Cocopah worked mostly as farm laborers clearing and developing the farmland that surrounds our reservation. During this time the Cocopah were largely ignored by the U.S Government. Most of our people barely understood there was a reservation set aside for the Cocopah.

We lived mostly in huts along the irrigation ditch banks and in other areas unsuitable for agricultural development. While the Government was dividing up the land for new settlers, we knew nothing about Government services—just our own ways.

It was not until Look magazine investigated our situation that the Cocopah received some attention. We were called the poorest Indian nation in the country and we began to be recognized.

In 1964 we organized a constitution under the IRA. The Cocopah began to apply for Government benefits and BIA services. In the 1970's we began to take advantage of social service and economic development programs. We started to develop our farms. Now, in the 1980's we are working on developing an economic base to support our government and people.

Our people are still poor and mostly unemployed. We have very few jobs on the reservation and many of our people are not trained. We have very serious health problems. But we are trying to improve.

When we look at economic improvement we are constantly faced with the very small land base we have been given. Our agricultural lands are so small that they cannot be run as an economic farm unit. The East and North Reservations have space only for homes and no space for any economic development. We have no good access to any major county or State roads.

When the Cocopah Tribe started to look for additional lands we first talked to our neighbors. We have always worked with the neighboring farmers and townspeople of Somerton, Arizona. We continue that working relationship today. The town of Somerton, our nearest municipal neighbor, through its town council has unanimously approved our land acquisition plan. They understand we need this land. We have included letters of support from two local individuals who live near the reservation. These people know our needs. Our representative to the Yuma County Board of Supervisors supports the legislation. Our state representative supports us. The Governor of Arizona supports us. Both Congressman Udall and Congressman McCain from Arizona have visited and walked over the lands we are seeking. We ask all of the members of the Committee to rely on the judgment of these two distinguished members of Congress.

The lands requested in S. 2862 will provide the basis for the economic survival of the Cocopah for generations to come. Much of the land we ask for is not very good. Some of it is just left over, but I know we can use it for our people. The Cocopah did not understand how to apply for land when our territory was settled for agriculture, so we got nothing. Now the good land is gone, so all we can ask for is what is left. We appreciate your support in passing this important legislation for the Cocopah.

APPENDIX IN SUPPORT OF COCOPAH LAND BILL

APR 1984
COCOPAH INDIAN
TRIBE
SOMERTON, AZ

April 27th, 1984

MR. Fred Miller Sr., Chairman
COCOPAH TRIBAL COUNCIL
P.O. Bin G
Somerton, Arizona 85350

Dear Mr. Miller:

I would like to offer my support to the Cocopah Tribe in their proposed Land Acquisition.

I have a business bordering on the land you wish to acquire. I have been a resident of the Yuma Area for over twenty years, and as such wish the Tribe the best in the success of this proposal.

Darrell L. Smith

Darrell Smith
ACRO APPLICATORS
Highway 95
Somerton, Arizona

APR 1984
COCOPAH INDIAN
TRIBE
SOMERTON, AZ

April 26th, 1984

Mr. Fred Miller Sr., Chairman
COCOPAH TRIBAL COUNCIL
P.O. Bin G
Somerton,Arizona 85350

Dear Mr. Miller:

I am a neighbor to the Cocopah Indian Tribe, and a land owner next to the land you wish to acquire. I have been a resident of the Yuma Area for over 30 years and am a retired Law Enforcement Officer.

As such, I would like to offer my full support to the Tribe in the proposed Land Acquisition.

My best to the Tribe for the success of this proposal, and may it bring economic security to your people.

Respectfully,

Bob W. Phillips
3706 W. County 17½
Somerton, Arizona

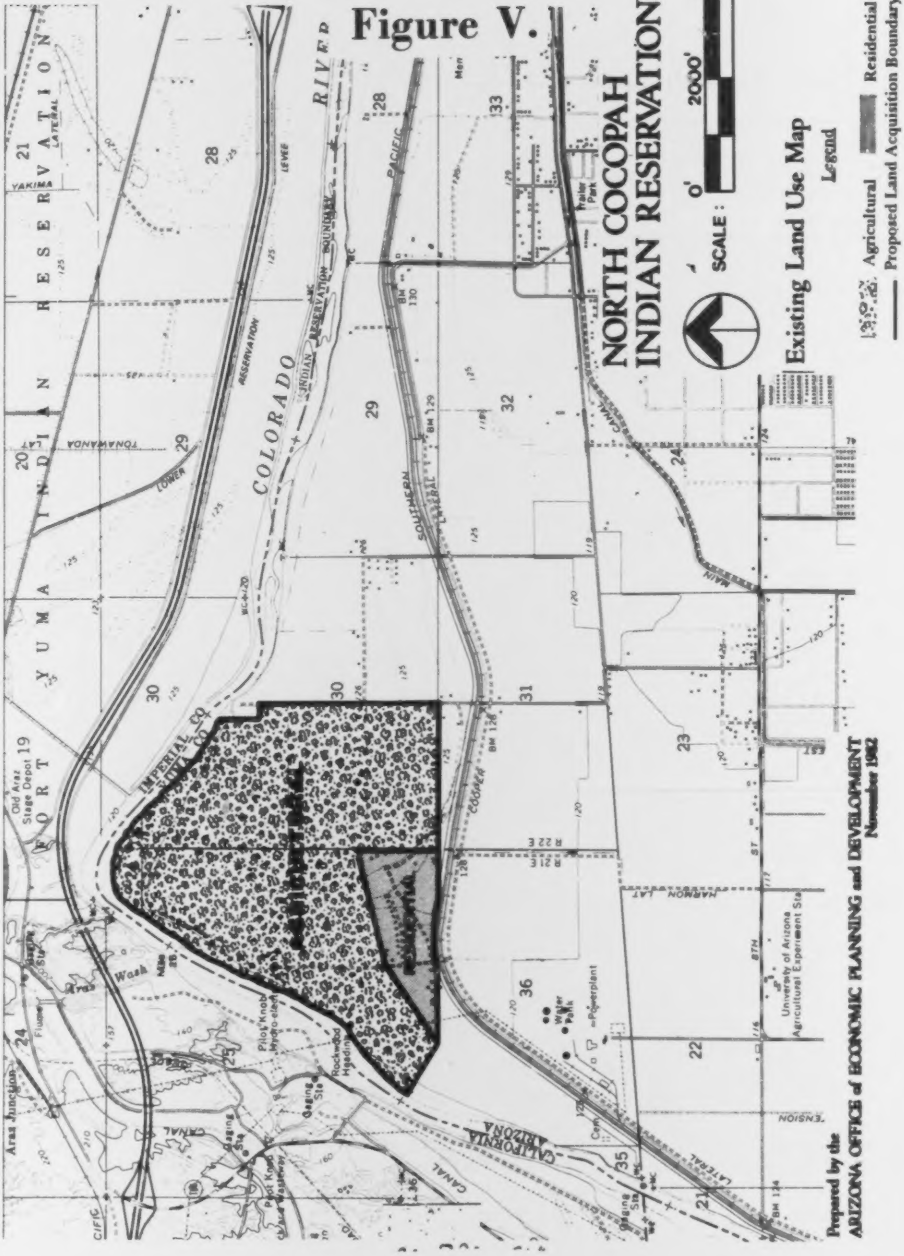


Figure V.

NORTH COCOPAH INDIAN RESERVATION

Existing Land Use Map

Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982

RECEIVED
Eric APR 27 1984
F.R.I.L.S.

April 12, 1984

Honorable Morris K. Udall
U. S. Representative
1101 East Broadway
Tucson, Arizona 85719

Dear Mo,

This letter is in reference to the Cocopah Indian Tribe's request for additional land near Somerton, Arizona, to make the reservation more self-sustaining. I support their requests for the land lying along the river and along the Mesa near the East Cocopah Reservation.

I hope that you will be able to expedite this request for our Indian tribes have been put on lands that are not the most productive. Even these lands have questionable productivity for farming, in my opinion. Those lands along the river which squatters originally leveled and developed when the rights of the squatters were recognized, now find themselves without title.

The United States has permitted them to farm these lands, and I feel that they are entitled to some sort of reimbursement -- whether it be in rents for a period of time, or cash settlement, if the tribes are able.

I think it is unfortunate that these people who have made their livelihood on these lands for so many years suddently find themselves in a position of being evicted. Consequently that is my reason for reimbursement of some type.

I do hope that these requests from the Cocopah Indian Tribe can be taken care of soon.

Sincerely,

FRANK McELHANEY
State Representative

FM:rr

cc: Jack Ullery
Fred Miller

JOHN McCAIN
FIRST DISTRICT, ARIZONA

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
SUBCOMMITTEE ON ENERGY
AND ENVIRONMENT
SUBCOMMITTEE ON WATER AND POWER
SUBCOMMITTEE ON MINING,
FOREST MANAGEMENT AND
BONNEVILLE POWER ADMINISTRATION

SELECT COMMITTEE ON AGING
SUBCOMMITTEE ON HEALTH AND
LONG TERM CARE

Congress of the United States
House of Representatives
Washington, D.C. 20515

1123 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-2635

1255 WEST BASELINE ROAD
SUITE 181
MESA, ARIZONA 85202
(602) 897-0082

SUITE 201
611 SOUTH MILL AVENUE
TEMPE, ARIZONA 85281
(602) 261-3181

March 13, 1984

MAR 1984
COCOPAH INDIAN
TRIBE
SOMERTON, AZ

Fred Miller, Sr., Chairman
Cocopah Indian Tribe
Bin G
Somerton, AZ 85350

Dear Chairman Miller:

It was a pleasure meeting with you and members of the Cocopah Tribal Council in January to discuss matters of concern to the tribe and to tour part of the reservation. I am writing to follow up on three of the issues that we talked about at that meeting: land acquisition, education and health.

I understand that you currently are working to achieve an understanding or accommodation with local entities on details of the tribe's proposed land acquisition bill. In view of the significance of additional land to the tribe's plans for economic development and for providing residential space, I wish you every success in your efforts to obtain the broadest possible local support for this legislation.

Regarding education, I am pleased to inform you that in February I became the newest member of the House Committee on Education and Labor, which has legislative jurisdiction over all federal Indian education programs. As a member of that committee I expect to be involved in its efforts to deal with Indian education programs and issues. Your views and counsel on such matters, and those of your educators, will be most appreciated.

With respect to health, the Interior Committee last week adopted recommendations concerning FY 1985 funding levels for the Indian Health Service for submission to the House Budget Committee, which will use them in setting spending targets for the Appropriations Committees. I will send you a printed copy of these recommendations as soon as they are available. You may be pleased to know that among the recommendations is an increase of $500,000 for alcoholism programs which, if appropriated, would be used in part to collect the data necessary for establishing a juvenile alcoholism program. The Committee is likely to include direction for such a program in legislation to reauthorize the Indian Health Care Improvement Act that is scheduled for consideration in May of this year.

The Interior Committee also is conducting informal oversight on the need for comprehensive legislation concerning juvenile alcoholism and drug abuse. Such legislation may be ready for introduction and consideration later this year.

Finally Mr. Chairman, I would like to offer you and your Vice Chairman, Ms. Sherry Cordova, the enclosed photographs as momentos of our January meeting. I look forward to our getting together again, and trust that you will continue to feel free to get in touch with me or my staff at any time on matters of concern.

Sincerely,

John

John McCain
Member of Congress

JM/mj
Enclosures

	DATE INITIALS
[✓ ADMINISTRATOR]	3-20 Jm
FINANCE	
[✓ CHAIRMAN]	
[✓ VICE CHAIRMAN]	
[✓ COUNCIL MEMBERS]	
ALAP	
IHMP	
SOCIAL SERVICES	
IWEP	
JUDICIAL	
HEADSTART	
LAW ENFORCE	
GRANTSMAN	
HIP	
PLANNER	
FILE	

BARRY GOLDWATER
ARIZONA

United States Senate
WASHINGTON, D.C. 20510

COMMITTEES:
INTELLIGENCE, CHAIRMAN
ARMED SERVICES
TACTICAL WARFARE, CHAIRMAN
PREPAREDNESS
STRATEGIC AND THEATER NUCLEAR FORCES
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMUNICATIONS, CHAIRMAN
AVIATION
SCIENCE, TECHNOLOGY AND SPACE
INDIAN AFFAIRS

RECEIVED
JAN 16 1984
F.R.I.L.S.

January 4, 1984

Mr. Fred Miller, Sr.
Cocopah Tribal Chairman
Cocopah Indian Tribe
Bin G
Somerton, Arizona 85350

Dear Chairman Miller:

Getting back to your earlier correspondence, I just wanted you to know that I am reviewing and studying the information you sent.

I can certainly understand the Tribe's desire to build a more viable economic base for its member; however, I would like more time to review your proposal before I give a definitive answer on the legislation you would like introduced in the Senate.

I will be back in touch with you and again, I appreciate your taking the time to get in touch with me on this.

Sincerely,

Barry Goldwater

Barry Goldwater

✓ ADMINISTRATOR
— ACCOUNTING
☒ CHAIRMAN
☒ VICE CHAIRMAN
— COUNCIL MEMBERS
— ADAP
— CHR
— COMMT CO-OR
— TWEP
— COM REL
— HEADSTART
— LAW ENFORCE
FILE

DATE / INITIALS

SEP 1983
COCOPAH INDIAN
TRIBE
SOMERTON, AZ

BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO

September 2, 1983

The Honorable Fred Miller
Chairman
Cocopah Tribal Council
P. O. Box Bin G
Somerton, AZ 85350

Dear Chairman Miller:

The Cocopah Tribal plan to acquire additional acreage adjacent to existing reservation lands for the purpose of economic stability has the support of this office. The planned usage is consistent with the state's response to the Yuma District Resource Management Plan.

You have my best wishes for the successful completion of your efforts to provide for the future of the Cocopah people.

Sincerely,

Bruce Babbitt
Governor

BB:rdl

Yuma County
Yuma, Arizona

OFFICE OF THE
BOARD OF SUPERVISORS
P.O. Box 1112
Yuma, Arizona 85364
Phone 782-4534

ROBERT W. KENNERLY
DISTRICT 1
CARYL L. STANLEY
DISTRICT 2
ERNESTINE HERRERA
DISTRICT 3
RAY MOORE
DISTRICT 4
R. PETE WOODARD
DISTRICT 5
ANDREW O. TORRES
CLERK/COUNTY MANAGER

AUG 1983
COCOPAH INDIAN
TRIBE
SOMERTON, AZ

August 8, 1983

Mr. Fred Miller, Sr.
Chairman
Cocopah Tribal Council
Bin G
Somerton, AZ. 85350

Dear Mr. Miller:

I wish to take this opportunity to express my sincere delight in having had an opportunity to meet with you and discuss the possibility of acquiring additional lands for the Cocopah Tribe.

I am supportive of your efforts to enhance employment and economic opportunities for your people. I do wish to go on record in support of this endeavor, as your representative.

Relay my warmest regards to the other members of the council. Feel free to call on me at anytime, if I can be of any assistance to you.

Sincerely,

Ray Moore

Ray Moore, Supervisor District #4
Yuma County Board of Supervisors

rsb

S. Herman Magaña, Mayor

Lupe G. Arvizo, Vice Mayor

Council Members

Tom Barnes
William Cano
Linda Ornelas Contreras
RoseMarie Gonzalez
Hilda G. Ponce

Town of Somerton

ONE NORTH STATE STREET
P.O. Box 638
SOMERTON, ARIZONA
85350

Telephones:
Town Hall 602/627-2551
Police/Fire 627-2012
Public Works 627-8600
Magistrates 627-8152

January 28th, 1982

Robert S. Barley
Chairman, Cocopah Tribe
Bin G
Somerton, AZ 85350

Dear Mr. Barley:

The Cocopah Tribe's intention to acquire approximately 269 acres north and adjacent to the West Cocopah Reservation and to subsequently develop it into a recreational vehicle and mobile home park and other supporting services all make it a very attractive venture as it would surely create more jobs for the area citizens and added revenue to local tribes and municipalities.

In light of this, the Mayor and Somerton Town Council extends its full support to the Cocopah Tribe and sincerely wish the Tribe's objective turns into a reality in the very near future.

If the Town of Somerton can be of any service, we would be more than happy to oblige.

Sincerely,

S. Herman Magaña
Mayor of Somerton

Mr. MILLER. Now, I would like our attorney to make a short statement, and we would be happy to answer any questions you may have. Thank you.

STATEMENT OF ERIC DAHLSTROM, ATTORNEY FOR THE COCOPAH TRIBE

Mr. DAHLSTROM. Thank you, Senator.

We appreciate, Senator, your proceeding with the hearing today, and we also appreciate the fact that the record is being held open so that those people who were unable to attend and make their comments will be able to do so.

When Congressman Udall first agreed to introduce this bill on behalf of the Cocopah Tribe, the tribe made a commitment to him that, in advance of introducing the bill, the tribe would use its good faith effort to try to identify all local issues at the local level, both with private parties and the Government agencies. This is Congressman Udall's district, and he obviously wanted those matters identified prior to introduction.

We believe that that has been done, and we welcome the opportunity, if there are additional comments and issues, that those may be made a part of the record.

My submitted testimony describes briefly the land use study which the tribe had contracted for and undertook for a period of months and which was the vehicle for identifying the existing lands around the current reservation which could be profitably used by the tribe. This document really is the major justification for the land use, and we would like, if the Senator would feel it appropriate, that that be made a part of the record. It does contain the major study for it.

My submitted testimony also briefly reviews the discussions and consultation which the tribe has had with all the various interests at the local and State level, both private and governmental. What I would like to comment on today is just a couple points which were raised by the Bureau of Reclamation and others which have recently been raised since our hearing last week in the House.

First of all, the list of rights-of-way, as you pointed out in your questions, contained in the Bureau of Reclamation's testimony, do have several inconsistencies and are inaccurate in the sense that they cover lands not actually in the bill. The list that the Bureau of Reclamation had, I believe, was prepared at the local office after our first meeting with them back in August of 1983. Subsequent to that time, most of the major inconsistent uses have been resolved by withdrawing the land from the initial bill. Therefore, I am glad that in your questions that matter was made a part of the record, that the Water Users Association headquarters and other major inconsistent users, which were raised in our consultation at our request well over a year ago, have been resolved.

Second, the tribe is working with the Yuma County Water Users Association and other local agencies at the county and city level in Yuma to make sure that all existing facilities are covered by proper rights-of-way. We believe we have resolved all of those with the exception of one power line which we think can be cleared up within the next couple of weeks.

The other matter, and we want this to be clear for the record, is that the county and city have an existing land use right on this land for a landfill. We have assured both the county and the city, and we do so again today, that that lease and dedication will remain valid and does remain valid after this land is transferred and that the existing use of that landfill will be honored by the tribe. We have made that assertion to the city and the county on other occasions and we just reemphasize that today.

As to the agricultural permits, the tribe has, since this project was initiated, held open the offer to existing agricultural users that they are willing and desire to enter into reasonable lease terms with these agricultural permittees so that they may continue their existing farming operations if they so choose.

Finally, I just might add, since there was a border issue raised which is under the jurisdiction of the Border Patrol, and the Bureau of Reclamation did not comment on that, I might add that over the weekend in the Arizona Republic there was an article concerning the land transfer. The Border Patrol person at San Luis was quoted as saying that they have a very good relationship with the Cocopah Tribe and would see no difficulty in coordinating border operations over a longer border than they currently have.

That covers the specific areas. I would just like to summarize by saying that the Cocopah are now asking for a piece of land left over after the Yuma Valley has been developed and divided up by the Government and patented to individual farmers with substantial Federal involvement in the development of the irrigation projects and reclamation projects in the area. During this time of massive Federal land transfer to private parties to encourage development, the Cocopah Tribe was not informed as to how to apply or obtain this land. It has now recognized the need for the land and would like the opportunity to make use of this land for its own economic development.

Thank you.

Senator DeConcini. Thank you very much, Mr. Dahlstrom.

You have pretty well stated some of the questions I had here regarding the Water Users Association, and you heard the testimony of Mr. Cooper.

Let me suggest to you that it seems to me this might be a workable project here, but there is some legitimate concern. I suspect over the next 30 days we will see some written testimony about access to the river. Realizing that, is the tribe willing or prepared, or would this confuse the situation at all if there were ample reservations or restrictions of use of that land for access for the proper maintenance and needs along the river?

Mr. Dahlstrom. There would be no problem with that, Senator. We would be more than happy to talk with the Bureau of Reclamation in the Washington office. We have had those conversations at the local office concerning specific language that they might suggest to satisfy their needs.

Senator DeConcini. The other question, and I guess there is nothing to do here about that, is I do not know what the tribe's position is if it is difficult when you have three sections of the reservation that are not contiguous, and instead of trying to unify them in some manner you are only adding to all three of them although the northern one is very small. Is that the best management and use for the reservation rather than trying to consolidate into one physical geographical area? Has that been considered and discussed by the tribe?

Mr. **Dahlstrom**. The land use plan that was undertaken by the tribe analyzed various strategies for the use of additional lands with the understanding that consolidation is a theory that has some support in the legislative process as well as the executive. It was felt, I believe, that the land use plan would demonstrate that that just was not workable in this situation. Therefore, the best chance was to develop the individual sites as a reasonable land base recognizing that the tribe simply is stuck with the unfortunate reality of three separate reservations that do make the delivery of services difficult.

Senator **DeConcini**. What about the other governmental entities in the area, the town of Somerton, the county of Yuma? Have they been approached and do they have any objections?

Mr. **Dahlstrom**. They have been approached. We circulated 200 copies of the land use plan, both at the local level and in Washington. The town of Somerton, at a public meeting held this summer, the town council—and a letter from the Mayor is enclosed in the appendix to our record—voted unanimously with one abstention to support the tribe's land use plan and legislation. The town of Somerton is the closest municipality to the reservation and the one most familiar with tribal matters. They felt that the enhancement of the development on the reservation would also help to enhance development in the Somerton area which is also a very poor community.

The city of Yuma and the County of Yuma have not taken an official position. It is our understanding that they have been fully informed, and it is our understanding that they have no objection, other than they want to be assured concerning the landfill use which we believe we have done.

Senator **DeConcini**. I have no further questions. Does the staff have questions?

Mr. **Alexander**. No, thank you, Senator.

Senator **DeConcini**. Thank you very much, Mr. Chairman.

[The prepared statement follows. Testimony resumes on p. 85.]

PREPARED STATEMENT OF ERIC DAHLSTROM, ATTORNEY FOR THE COCOPAH TRIBE

My name is Eric Dahlstrom. I represent the Cocopah Tribe in its efforts to obtain additional lands to enhance the economic viability of the Tribe. I will first describe the discussions and negotiations which the Tribe has undertaken in preparing for the introduction and passage of S. 2862. I will then discuss those issues most commonly raised by the parties interested in this legislation.

The Cocopah Tribe began its land acquisition process by contracting for a land use study under an Indian self-determination grant from the Bureau of Indian Affairs. The study surveyed all public lands contiguous to the existing North, East, and West Cocopah Reservations. The study reviewed the current uses of contiguous lands and the uses that Tribe could profitably make of these lands. The study identified lands which could be profitably used to expand the Tribe's agricultural base, as well as lands suitable for commercial and recreational development.

The Tribe circulated the land use plan to all local, state and federal agencies as well as private parties near the reservation. The Tribe wanted thoughtful reactions from all interested parties, so that any other planned uses for the land could be coordinated. The Tribe also wanted to keep all local interests fully informed of its plans. The Tribe then undertook an extensive consultation process which has now lasted for over one year.

In addition, the Tribe submitted its land use plan to the Bureau of Land Management for consideration in its planning process under the Federal Land Policy and Management Act. The land use plan was provided to agricultural permittees, as well as Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, Yuma Valley Water Users Association, County of Yuma, City of Yuma, Chamber of Commerce, and other local agencies.

As a result of the extensive local consultation the Cocopah Tribe has identified all serious issues concerning the legislation. The proposed legislation provides protection to the rights of way for facilities under the jurisdiction of the Bureau of Reclamation. The area intended for the future location for the headquarters office of the Yuma Valley Water Users Association was deleted from the proposed acquisition as was the location currently used for a homesite and garden area for an employee of the Water Users Association. All other current users with valid existing rights are protected in the legislation, including the Yuma County Landfill which we are told will be fully used in approximately eight years.

The Bureau of Land Management has expressed concern over the expansion of the reservation on lands within the flood plain of the Colorado River. The Tribe already has a substantial portion of its West Reservation within the flood plain so they are familiar with flood plain management issues.

The lands within the flood plain are only intended for agricultural and recreational uses which are fully consistent with current flood plain management requirements. As a further protection, Section 3 of H.H. 5760 explicitly makes the Executive Order Number 11988 governing flood plain management applicable to these lands.

The recent analysis of the lands by the Bureau of Indian Affairs has identified a sixty foot withdrawal along the Mexican border to the International Boundary Commission. The Tribe's current reservation has a common boundary with Mexico. The Tribe is, therefore, familiar with the requirements of the International Boundary Commission and has a good working relationship with the Border Patrol. In fact, the Border Patrol maintains fences and gates along the Colorado River levee which passes through the existing reservation. The addition of these lands to the reservation will not create any new border or International Boundary issue. Rather, it will merely extend the existing relationship over a larger area. Nothing in the legislation will interfere with the continuation of the sixty foot withdrawal to the International Boundary Commission.

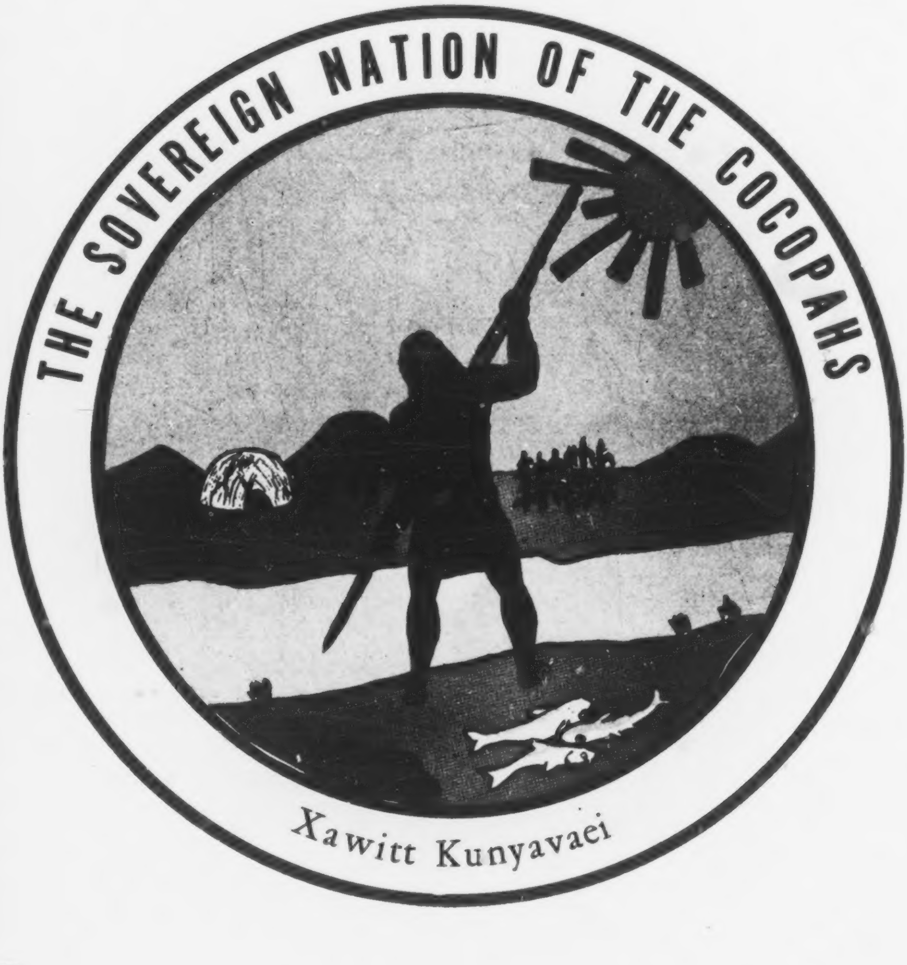
The Yuma Valley Water Users Association is the local organization which has expressed the most concern over the land acquisition. The Water Users Association under a contract with the Bureau of Reclamation operates the irrigation works in the area affected by the acquisition. They have canals and other facilities on the land sought by the Tribe. The legislation protects all existing rights of way including the facilities operated by the Water Users Association.

As a result of a series of discussions sponsored by Congressman Udall the Water Users Association and the Cocopah Tribe have agreed in principle to a memorandum of agreement which resolves all existing issues raised by the legislation and other concerns raised by the Water Users Association. This memorandum of agreement should prove useful in establishing a productive and cooperative working relationship between the Cocopah Tribe and the Water Users Association for years to come. One of the benefits of the Tribe's extensive consultation process is demonstrated in the memorandum of agreement. The Tribe and the Water Users Association have pledged to cooperate in the future development of roads and the protection of irrigation facilities to the mutual benefit of both parties. In addition, the Water Users Association has facilities, including one power line, located on the subject lands for which a valid right of way has never been filed. The Tribe has agreed to cooperate with the Water Users Association to assure that all valid rights of way are properly filed before the legislation is adopted. If for some reason these rights of way are not filed, the Tribe has assured the Water Users Association that such rights of way will be properly protected thereafter.

The Tribe is pleased to come before you today in support of legislation with all the major issues resolved and which finds much local support for the surrounding community. For instance, enclosed in our appendix are letters of support from two non-Indian neighbors to the reservation who have lived in the area for many years. Also attached is a letter from the Mayor of Somerton, Arizona, the closest municipality to the reservation, voicing the support of the Town Council and the Mayor.

This local support has only come because the Tribe has presented its case to its neighbors on a face-to-face level. The Tribe now asks that you support this important legislation which will assist the Cocopah for years to come. This legislation will clearly mark a major step in the struggle of the Cocopah for economic well being.

[THE FOLLOWING DOCUMENT HAS BEEN CONDENSED FOR PRINTING]


THE SOVEREIGN NATION OF THE COCOPAHS
Xawitt Kunyavaei

PROLOGUE

COCOPAH INDIAN RESERVATION

LAND USE AND DEVELOPMENT PLAN

The Cocopah people are grateful to all concerned for establishing the present Cocopah Indian Reservation. However, due to the present and projected economic conditions, the only way we can accomplish our goals to be self-sufficient is to augment our reservation land base.

This land use and development plan provides historical background of the Cocopah Indian Reservation and its people, the socio-economic environments of the reservation community, existing land uses, proposed land acquisition and its land uses, and an analysis of the environmental, economic, community impacts and mitigations posted by the efforts of land acquisition.

The Cocopah Indian Tribe is determined to pursue every avenue to establish a usuable land use and development plan to maximize the economic, socio-political, and cultural benefits derived from its existing land base and proposed land acquisition.

Specifically, the public lands requested for acquisition will provide opportunities for commercial/industrial development, agricultural development, public and tribal recreational development, residential development, and open spaces.

The acreage of public lands requested to augment the Cocopah Indian Reservation consists of 3,930 acres. Of the 3,930 acres proposed to be acquired, 1,784 acres are contingent to West Cocopah Indian Reservation; 1,570 acres are contingent to East Cocopah Indian Reservation; and 576 acres are contingent to North Cocopah Indian Reservation (Known as lots 5 & 6 which is permitted to Cocopah Indian Tribe by the Department of Interior).

The Cocopah Indians of today and future generations who will benefit from the development uses of the acquired lands will be grateful for the effort to obtain a suitable tribal home lands.

Sincerely,

Sherry Cordova
Sherry Cordova
Vice-Chairperson

Fred Miller Sr
Fred Miller, Sr.
Chairman

Irene Sharkey
Irene Sharkey
Council Member

Colin Soto
Council Member

Irwin J. Twist
Irwin Twist
Council Member

INTRODUCTION

A. NEED FOR ADDITIONAL RESERVATION LAND

Historically, the Cocopah Indian Tribe has demonstrated a consistent and persistent effort toward their goal of obtaining a homeland proportional to their socio-economic, and cultural requirements commensurate with their objectives to establish self-sufficiency and to preserve and perpetuate their tribal identity.

The land base for all Indian Reservations are important to all tribes. The ratio of land to its people is significant. Nationally, Indian Reservations average overall about 75.9 acres per tribal member.

The Bureau of Indian Affairs, ANNUAL REPORT OF INDIAN LANDS, 1980, lists six states possessing a large amount of Indian trust land and the average per capita.

TABLE I

Comparison Indian Reservation Resident Population and Acreage

Western United States

State	Total Trust Acres	Total Indian Population	Ratio AC/Per Capita
Montana	5,212,701	37,270	139.9
Arizona	19,807,308	152,857	129.9
Utah	2,283,594	19,256	118.6
South Dakota	5,091,107	45,101	112.9
New Mexico	7,140,839	104,777	68.2
North Dakota	850,725	20,157	42.2

Source: BIA, ANNUAL REPORT OF INDIAN LANDS, 1980.

In the state of Arizona, the Yuman group of Indian Reservations reflect a wide range of acreage per capita. The chart depicts that the present Cocopah Indian Reservation, containing 1,772 acres established by an Executive Order in 1917, if it were totally habitable and usable, would provide only 2.1 acres per person. The proposed land acquisition expands the Cocopah Indian Reservation to a total of 5,702 acres, increasing the ratio to 6.8 acres per person.

TABLE II

Comparison Yuman Indian Reservation Resident Population and Acreage

State of Arizona

Tribe	Reservation	Total Trust Acres 1/	Total Tribal Population 2/	Ratio Acre Per Capita
Hualapai	Hualapai	992,463	1,017	975.9
Havasupai	Havasupai	188,007	475	395.8
Chemehuevi	Chemehuevi	30,654	124	247.2
Mojave	Colorado River*	268,691	2,084	128.9
Mojave	Fort Mojave	32,680	537	60.9
Maricopa	Ak Chin	21,840	433	50.4
Maricopa	Gila River*	371,930	9,592	38.8
Quechan	Fort Yuma	44,005	1,500	29.3
Cocopah	Cocopah (Present)	1,772	835	2.1
Cocopah	Cocopah (Proposed)	5,703	835	6.8
Yavapai	Yavapai - Prescott	1,399	75	18.7
Maricopa	Salt River*	49,293	3,364	14.7
Yavapai – Apache	Camp Verde*	653	516	1.3

1/ Tribal and allotted trust lands reported by Bureau of Indian Affairs in 1980 ANNUAL REPORT OF INDIAN LANDS

2/ Reservation population as reported in Bureau of Indian Affairs/December 1981 Indian Service and Labor Force Estimates

* Denotes reservations shared by other tribal groups

With the increasing number of tribal enrolled members and other service population of the Cocopah Indian Tribe there is a great demand for services such as housing, social services, health, education, tribal government and administration, recreation, law and order, and opportunities for employment and income. Recognizing the economic growth, development trends, and population dynamics of the surrounding area, the Cocopah Indian Reservation is pressured to produce a development plan.

The basic need identified to deal with development issues and its survival as a tribal group is to increase its land base. It is for this purpose that the Cocopah Indian Tribal Government established the objective to seek legislation to augment the reservation land base.

B. PURPOSE AND OBJECTIVES OF THE LAND USE AND DEVELOPMENT PLAN

This plan was developed by the Cocopah Tribal Government under a Bureau of Indian Affairs Self-Determination Grant, H50G14202077, dated July 15, 1982, to the Cocopah Tribal Council. The grant is authorized by Public Law 93-638 (25 U.S.C.A. 450h) and administered in accordance with regulations contained in 25 C.F.R. 272. The purpose of the plan is to:

1. Identify public domain lands contiguous to the Cocopah Reservation or historically and currently utilized by the Cocopah people.
2. Research documents, map locations and present usages of lands identified.
3. Develop proposed land use plan for lands identified.
4. Evaluate economic and community services, environmental, rights-of-ways, and land lease impacts and mitigations.

The objectives of the Cocopah Tribal Governments Reservation Land Use & Development Plan are:

1. To provide a living area proportional to its population requirements.
2. To increase the economic potential of the reservation resource base.
3. Enhance employment opportunities and the general standard of living of the Tribe.

II. HISTORICAL SKETCH OF THE COCOPAH INDIAN TRIBE

The present day Cocopah Indian Tribe is a descendant from the greater Yuman group of Indians who occupied and utilized the lands along the Colorado River from present day Northern Arizona, Southern California, Lower Colorado and Northern Mexico. (See Figure I).

Cocopahs are one of seven distinguishable groups of Yuman Indians. The Yuman group differentiated by the early 1800's into three separate upland tribes, known today as the Yavapai, Hualapai and Havasupai and four river valley tribes, the Maricopa, Quechan, Mohave and Cocopah.

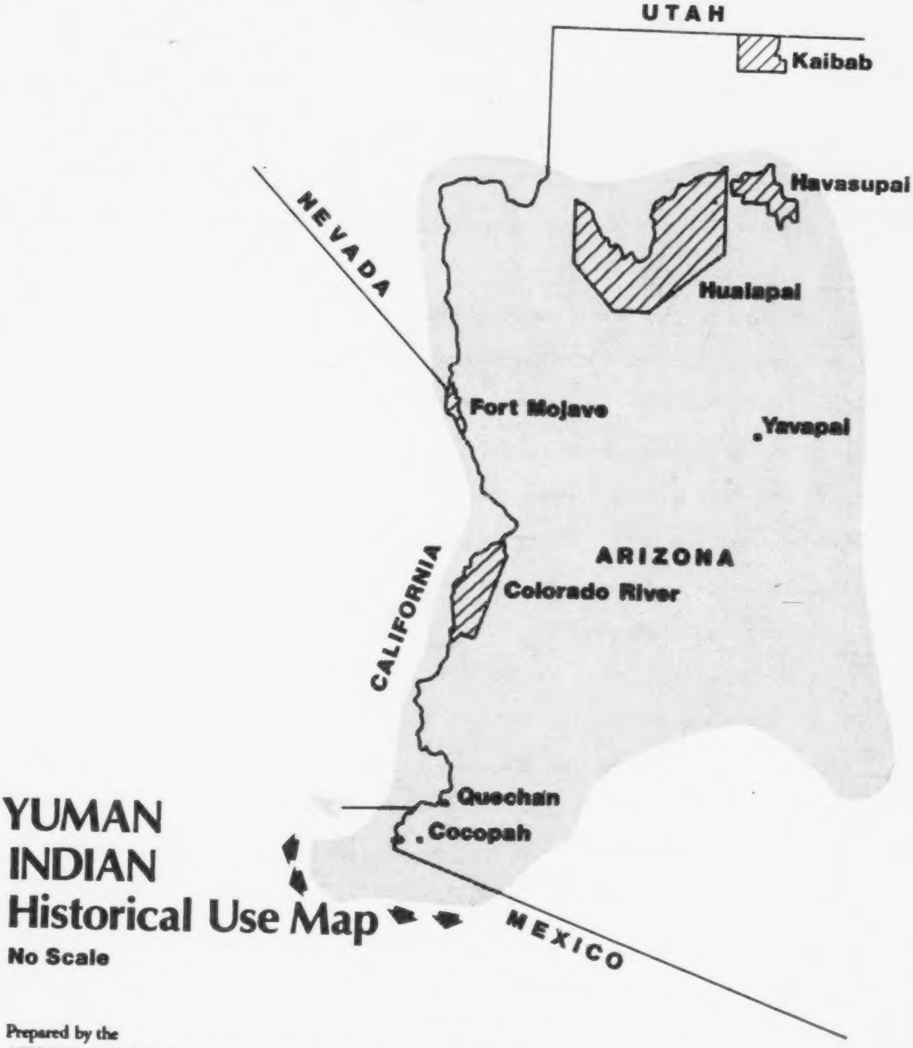
The ancestors of the Cocopah appear to have come from the north around 2,500 to 3,000 years ago. Their occupation of the lower Colorado delta probably coincided with the desiccation of Lake Cahuilla in the fifteenth century. During historic times they have been consistently recorded in the delta area that now comprises part of Sonora and of Baja California, Mexico (Williams 1975).

Horticulture was very significant to Cocopah economy as reflected in their planting; they used digging sticks to make holes in which to deposit seeds of corn, beans, melons, and pumpkin or squash. Earthen dikes and ditches were sometimes constructed and utilized to centrally direct irrigation water.

Throughout the early 1800's the Yumans resided in their traditional area with little change in life-style. The subgroups of Yumans were hostile to one another and carried out a continual warfare for the purpose of acquiring additional farming land bases. However, the groups allied forces to combat the territorial encroachments of their common enemy, the Apache.

The first Spanish contact with the Yumans was made near the mouth of the Colorado River by Coronado's marine expedition in 1540 lead by Alarcon. Approximately 150 years later Father Kino, explored southwestern Arizona to the confluence of the Gila and Colorado Rivers, encountered Yuman Indians, met with them and exchanged gifts.

Figure I.



Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982

Missionary contacts with the Yumans resumed again in 1748 when the Jesuit Father Sedelmaya contacted the Yumans at the mouth of the Gila River and was met with hostility. The Spanish missionary efforts under the Jesuits and Franciscans continued through 1781 when the Yumans rose up and destroyed two missions constructed by the Franciscans on the west side of the Colorado River, downstream from the confluence of the Gila River.

Cortez reported in 1799 that an estimated three thousand Yumans were occupying lands along the Lower Colorado River Basin. Historically, this report marked the end of the Spanish contact with the Yumans.

Anglo-American contact with the Yumans began in the 1840's as the area from the mouth of the Colorado River to the Grand Canyon became a significant migration corridor for westward expansion to California. The discovery of gold in California in 1849 brought a great number of migrants through this area for the next 20 years. To protect the migration route, it became immediately apparent to the government that the southern route, occupied by the Yuman Indians to California must be kept open. In 1850 the United States Army established a garrison at Camp Independence to protect the migrants. This garrison was transferred a year later to the site of an old Spanish Mission, later named Fort Yuma.

In 1862, gold was discovered at La Paz on the Colorado River which compounded the influx of non-Indians into Yuma territory and aggravated the hostilities between the resident Yumans and the migrant Anglo-Americans.

In 1864, Charles D. Poston, Indian Agent, Territory of Arizona, called for a meeting with the Yuman groups. Representatives of the Quechan, Yavapais, Chemehuevis and Mojaves attended the meeting. It should be noted that the Cocopahs did not participate in this meeting and the record does not offer insight into their absence from these proceedings other than the Cocopahs did not desire to be moved north. The meeting resulted in a recommendation that a reservation be established for the Mojave group of Yumans. A year later, in 1865, the Colorado River Reservation was established for the Mojaves and all other Indians residing in the Colorado River drainage, resulting in significant numbers of Navajo and Hopi Indians taking allotments on the reservation. Except for a few Mojaves, the remainder of the Yuman groups did not accept the Colorado River Reservation. Approximately 20 years later, by Executive Order of January 9, 1884, the Yuma Reservation was established in California for the Quechan group of Yumans.

During this period of the mid 1800's through the early 1900's, the Cocopah group of Yuman Indians tenaciously maintained their unique social, religious and cultural identity, passively resisting economic and political motivations to assimulate with other tribal and sub-tribal groups on established reservations.

It was not until the Congressional authorization of the Bureau of Reclamation, Yuma Irrigation Project, on May 16, 1904, that the presence of the Cocopah group of Yuman Indians in the Lower Colorado River Basin became a sensitive political-economic issue. Intense administrative efforts were made by the Indian Service to encourage Cocopahs to take allotments on the Colorado River Reservation. The population of Cocopahs "deserving status of American Indians" became a major administrative issue with contentions that this "service population" was politically diminished by treaty with Mexico and subsequent decisions of the Boundary Commission. Unfortunately, the ancestral lineage of the Cocopahs had no way of accommodating political determinations of citizenship.

The Commissioner of Indian Affairs, in 1913, determined "that approximately 450 Cocopah Indians were living and had always lived on the Colorado River and its tributaries and established a permanent residence in this country." The Commissioner instructed the Superintendent, Fort Yuma School, to advise the Cocopahs that if they desired to move to the Colorado Indian Reservation and receive allotments there, they should apply individually for enrollment with the Superintendent.

Cocopahs continued to resist this effort of assimulation with other tribes and groups of Indians, viewing it as a threat to their individual cultural identity. The Cocopahs presented an offer to the Bureau of Indian Affairs in 1914 requesting "absentee allotment" on the Colorado River Reservation, which they would sell, using the proceeds to purchase the lands they were residing on. The Commissioner of Indian Affairs rejected the counter offer viewing the refusal of the Cocopahs to move to the Colorado River Reservation as justification for no further action by the Bureau to establish a separate reservation for the Cocopahs.

In 1917, with the increased development of lands under the Yuma Irrigation Project, the presence of the Cocopahs became a sensitive political-economic issue once more. The Bureau of Indian Affairs again discussed the proposition of relocating the Cocopahs to the Colorado River Reservation, which was rejected by the Cocopahs. They were well adjusted to living in the Yuma Valley. They were self-supporting, working in the community on the construction of Yuma Irrigation Project and on farms in the area.

The Bureau of Indian Affairs, based on a study by the General Land Office, dated March 23, 1917, recommended the withdrawal of two tracts of land near Somerton for the Cocopahs. On September 27, 1917, President Woodrew Wilson issued Executive Order No. 2711 establishing the Cocopah Reservation consisting of approximately 440 acres known today as East and West Cocopah Reservation.

Subsequently, through legislation and litigation, the boundaries of the Cocopah Reservation have been substantiated and are recognized to comprise 1,772 acres.

It is evident from the records that the Cocopahs, a relatively small group, have and continue to tenaciously and persistently hold to their unique social and cultural principals, preserving and perpetuating their tribal identity.

III. SOCIO-ECONOMIC PROFILE OF TRIBE

A. POPULATION

A review of the historical records concerning the Cocopahs reveals that their population and origins have created more administrative concern than any other socio-economic factor. Historically and currently the Cocopahs, as the other groups of Yumans, have always lived in the same geographic area, the lower Colorado River Basin. Politically, this area has been governed and controlled by the Spanish and Anglo-Americans. As political control changed, the political nationality of the area residents also changed. However, the social, cultural and ethnic identities of the people were sustained. The Bureau of Indian Affairs, in attempting to "scope out" the size of the Cocopah problem in the Yuma-Somerton area, established administrative criteria in the early 1900's which classified Cocopahs as Mexican or American for the purpose of recognizing those individuals eligible for placement and allotment on the Colorado River Reservation. Bureau of Indian Affairs estimated that the number of Cocopahs ranged from 450 in 1913 to 60 in 1953, depending on the nationality criteria applied.

Two of the major factors contributing to the wide range in population numbers were the resistance of the Cocopahs to a census because of fear of being forcibly moved to the Colorado River Reservation and the concern of the Bureau of Indian Affairs that "Mexican" Cocopahs would become eligible for allotments on the reservation and thereby become eligible for other federal benefits. The latter factor appears to be the most significant contribution to the small number of federally recognized Cocopahs considered when the Reservation was established in 1917 by Executive Order No. 2711.

Currently, the Bureau of Indian Affairs, REPORT ON LABOR FORCE, January 1983, estimates that there are 869 Cocopahs. Of 869 Cocopahs, 635 (73%) reside on the Cocopah Indian Reservation, and 234 (27%) live outside the Cocopah Indian Reservation.

These figures represent the total number of individuals associated by family relationship with the Cocopah Indian Tribe, some of them may not be eligible for tribal membership. According to the 1982 Cocopah Tribal Membership Roll, there are 575 enrolled Cocopahs representing 66% of the total Cocopah service population.

TABLE III

COCOPAH INDIAN POPULATION
AGE by SEX

16 YEARS of Age & OLDER

AGE	MALE	% of Total	FEMALE	% of Total	TOTAL	% of Total
1 - 15	122	14	111	13	233	27
16 - 24	103	12	86	10	189	21
25 - 34	72	08	92	11	164	19
35 - 44	55	06	73	08	128	15
45 - 64	50	06	64	07	114	13
65 & OVER	18	02	23	03	41	04
TOTAL	420	48%	449	52%	869	100%

Source Bureau of Indian Affairs, REPORT ON LABOR FORCE, January 1983

TABLE IV

COCOPAH INDIAN POTENTIAL LABOR FORCE STATUS AND INCOME

16 Years of Age & Older

NOT IN LABOR FORCE	NUMBER	PERCENTAGE
A – Students	20	
B – Other	34	
Subtotal	54	
LABOR FORCE		
C – EMPLOYED	270	46%
D – UNEMPLOYED	312	54%
Potential Labor Force	582	100%
INCOME		
Employed earning 7,000 a year or more	110	41%
Employed earning 7,000 a year or less	160	59%
TOTAL	270	100%

Source Bureau of Indian Affairs, REPORT ON LABOR FORCE, January 1983

B. EMPLOYMENT AND INCOME

The Bureau of Indian Affairs estimates that 59% of employed Cocopah earn less than $7,000 a year for their full time jobs. This indicates that only 41% earn more than $7,000 a year.

The Cocopah unemployment rate of 54% is almost 5 times that of the current national rate (10%); 5 times that of Arizona's unemployment rate (11.7%); and twice of Yuma's unemployment rate (20%). The current reported unemployment rate for Indians nationally is 31%.

There is limited opportunity for employment on the reservation. Most of the employment on the reservation is generated from federal, state, and tribal programs. Likewise, since Yuma is experiencing a high unemployment rate, jobs offered outside the reservation are fairly competitive.

At present, irrigated agriculture dominates Cocopah's present land base. There are approximately 1,600 acres of land in the existing reservation classified irrigable. Approximately, 685 acres of reservation land are being farmed through leases to non-Indian. Income from agriculture amounted to approximately $71,683.00 in 1981. These lands are the only source of tribal income.

There are no commercial activities and industries located on the reservation. Although the reservation holds a labor force sufficient to support commercial and industrial development, there is a limited land base for these activities. The location of West Cocopah on a spur of the Southern Pacific Railroad, provides potential for transportation of raw material and finished products if land were available for an industrial site.

Training is being offered on the reservation to prepare some tribal members for other jobs. A mechanic shop leased to a private institution provides training in auto mechanics. There are also some state and other federal programs which offer temporary employment on the reservation.

C. HOUSING

The U.S. Department of Housing and Urban Development and the BIA Housing Improvement Program (HIP) assisted the tribe in the construction of low cost housing for a number of tribal members.

According to the Bureau of Indian Affairs, Fort Yuma Agency report, there are currently 100 permanent family residences located on the East and West Cocopah Reservation. A majority of the permanent homes meet the Bureau of Indian Affairs minimum criteria established for standard housing as related to living space, heating and ventilation, sanitary facilities and structural conditon. Approximately 25 families are living in the mobile homes located on North Cocopah (Lots 5 & 6). A majority of the mobile homes are substandard and need to be repaired. The Bureau of Indian Affairs estimates a current need of 50 additional permanent housing units to accomodate families presently living in substandard dwellings not suitable for renovation or repair.

The housing condition demands more land base and income for construction to meet the increasing population due to birth or migration of tribal members back to the reservation.

D. HEALTH

The Fort Yuma Service Unit administered by the Department of Health and Human Services provides hospital and health services for the eligible residents of the Cocopah and Fort Yuma Reservations. The Fort Yuma Indian Hospital consists of a 19–Bed hospital and outpatient clinic. This facility supports a daily patient census of up to 19 patients and an average of 60 daily outpatient visits. Acute surgical and medical emergencies are referred to the Yuma Regional Medical Center.

Yuma Service Unit, Field Health Services, include Community Health Nursing, Project Sanitation Engineering, Environmental Health Technicians, Medical Health Services, Community Health Education and Dental Health Programs.

The leading health problems attended through the Fort Yuma Service Unit are: Upper respiratory infections, Diabetes, Otitus media, Respiratory illnesses, Alcoholism and related chronic disorders.

In 1950, the Bureau of Indian Affairs reported the principal diseases treated at Fort Yuma Hospital were: Upper respiratory infections, Gastrointestinal diseases, Genito-urinary infections, communicable diseases, Traumatic surgical conditions. Tuberculosis, in 1950, was the principal cause of death. The 1980 report indicates tuberculosis " no longer represents the level of incidence of 2 – 5 years ago." However, alcoholism and its numerous related physical problems is becoming a very serious chronic health problem.

There is a need to increase medical and health services for the reservation.

E. EDUCATION

The Cocopah Indian Tribe places a great deal of emphasis on educational programs addressed to the needs of the community, namely; tutorial services to increase attainment level; individual instructions and counselling to prevent drop-outs; job related training programs;

and General Education Development. Most of these programs are funded under various titles of the Elementary and Secondary Education Act.

Aside from the Headstart administered by the tribe, the Cocopah children attend public schools in the Yuma Somerton area. Most of them complete the eighth grade, however, less than sixty percent continue into high school. Approximately fifty-five percent of the students enrolling in high school, graduate. An increasing number of Cocopahs are attending college, several have graduated with degrees and have completed graduate work at the masters level.

F. COCOPAH TRIBAL GOVERNMENT

The government of the Cocopah Tribe is organized pursuant to the Act of June 18, 1934 (48 Stat. 984). The Constitution and By-Laws of the Cocopah Tribe was adopted by the membership on October 8, 1964. The organic document was approved by Secretary of Interior on November 16, 1964.

The Constitution establishes a Tribal Council comprised of five members, consisting of a chairman, vice chairman and three council members. All officers of the council are elected by the membership at large for two-year terms of office.

The Tribal Council is empowered by the membership to:

(1) Represent the Cocopah Tribe and act in all matters that concern the welfare of the Cocopah Tribe and to make any and all decisions which are consistent with the constitution and the Statutes of the United States.

(2) Veto any sale, disposition, lease or encumbrance of tribal lands, interests in land or other tribal assets.

(3) Advise the Secretary of the Interior or his authorized representative with regard to all appropriate estimates or federal projects for the benefit of the Tribe, prior to submission of such estimates to the Bureau of the Budget and to Congress.

(4) Regulate and license and/or issue peddler's permits to members or non-members to do business on the reservation in a manner not inconsistent with trader's licenses issued by the Commissioner of Indian Affairs.

(5) To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever not inconsistent with law or with any provisions of this Constitution.

(6) To make and perform contracts including loan contracts and agreements of every description not inconsistent with law or with any provision of this Constitution with any person, association, corporation, municipality, county, State or with the United States.

(7) To pledge or assign chattel and crop mortages as security for loans, or approve individual assignments.

(8) To regulate its own procedures; to appoint subordinate committees, commissions, and boards; and to create and regulate subordinate organizations for economic and other purposes.

(9) To negotiate with the Federal Government, State, City and County officials.

(10) The tribal council may exercise such additional powers as may be delegated to it by the members of the Tribe and take such actions as are necessary to carry into effect any of its powers and duties.

Subject to the approval of the Secretary of Interior, the Cocopah Tribal Council is constitutionally empowered:

(1) To acquire, manage, lease, use, contract, assign, encumber, or dispose of any or all tribal assets, subject to approval when required by law and regulation.

(2) To employ legal counsel, the contract, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior or his authorized representative.

(3) With the approval of the Secretary of Interior or his authorized representative, assign future tribal income from trust property.

(4) To budget tribal funds and manage economic affairs and enterprises in accordance with the terms of the budget and this constitution.

(5) To promulgate and enforce ordinances providing for the levying of taxes; dealing with law and order, domestic relations, and welfare; providing for the licensing of members and nonmembers for purpose of hunting and fishing on the reservation and for the exclusion from the

territory or the community of persons not so licensed and establishing proper agencies for the enforcement of such ordinances upon the reservation.

(6) The tribal council may elect to designate a commercial bank as the Cocopah Tribe's depository.

Funding for tribal government operations and programs is derived from the proceeds received from tribal lands. As previously mentioned, this resource income is approximately $71,683.00 per annum. The present small reservation resource income base limits the services the Tribal Government can provide.

G. LAW AND ORDER

Law enforcement services on the Cocopah Reservation are provided by the tribal government funded by a contract with the Bureau of Indian Affairs. The tribal government employs six police officers who are responsible for the enforcement of the Cocopah Tribal Law and Order Code, adopted pursuant to Article IV, Section 1B(5) of the Cocopah Tribal Constitution and By-Laws. All officers are trained in police science and meet qualifications prescribed by the Bureau of Indian Affairs in 25 C.F.R. 11. The law enforcement program is periodically evaluated by the Bureau of Indian Affairs. Recent evaluation reports rate the overall law enforcement program as excellent.

Infractions of the law on the reservation are largely misdemeanors related to traffic violations, family disputes and disorderly conduct.

Major crimes committed on the reservation are under the jurisdiction of the federal government. Investigation of these crimes are conducted by the Bureau of Indian Affairs and/or the Federal Bureau of Investigation. Prosecution of these cases are conducted by the U.S. Attorney in federal court. There have been very few major crimes committed on the Cocopah Reservation.

Cocopah Tribal Government judicial services are provided through the Cocopah Tribal Court. Judges appointed by the tribal council hear, decide and sentence offenders in accordance with the Cocopah Law and Order Code and Title 25 of the Code of Federal Regulations, Part 11.

The Cocopah Tribal Government contracts with Yuma County for detention services for offenders sentenced to be incarcerated. This procedure has proven to be mutually satisfactory to the Tribe and County. The total number of days served by Cocopah offenders in the Yuma County facility averages about 326 prisoner days annually.

IV. TRIBAL GOALS – LAND USE AND MANAGEMENT

A. ECONOMIC DEVELOPMENT AND EMPLOYMENT

To attain the overall goal of Cocopah tribal and individual self-determination and sufficiency, the Cocopah Reservation has to have the resource potential to provide a proportionate share of the employment and income for the government and community. The land area of the existing reservation precludes the development of a viable community and prohibits the Tribe from attaining their goals of reducing unemployment and increasing the income and earning power of the members. Only with an adequate land and resource base, wisely utilized and managed, can the Cocopah Tribe continue to strive to achieve their goals of attaining a quality of life equal to other American communities.

The development, utilization, and management of existing and acquired reservation lands will address the following objectives:

1. To increase land base to stimulate commercial/industrial and recreational activities which would provide opportunities for employment and high income levels of tribal members.
2. To create a diversified economy providing work experience, skills and training to increase employability of tribal labor force.
3. To increase tribal revenue from tribal enterprises or land leases covering costs of tribal governmental services, having improvements, and offer other services to tribal membership that are not available from other state and federal agencies.
4. To provide capital for development and improvement of reservation resources.
5. To provide land base for tribal infrastructure programs, institutions, service areas and recreational areas.

B. EDUCATION

The Cocopah community continues to place great emphasis on education, recognizing that it is an essential ingredient to improving the quality of individual and family life. The goal of the Tribe is to establish a reservation living environment that provides the opportunities and resources necessary for full individual development and self realization. Continued emphasis will be placed on (1) improving the achievement levels of elementary and secondary students, (2) reducing high school "drop-outs", (3) and increasing individual employability through technical and professional education and training.

The objective of the Cocopah community is to advance themselves educationally and economically. Cocopahs, as other Arizona Tribes, on the average have lower educational attainment levels than the general population. This is due in part to the remoteness of reservations, language barriers, economic and social disparities with surrounding communities.

C. HOUSING

The Cocopah Reservation is considered "home" by all Cocopah members. Many who are currently living "off the reservation" would return if employment opportunities existed and will return to spend their retirement years. In view of these facts and the importance of adequate and healthy living space to the stability of family life, the Cocopah Tribe will continue to seek resources to develop and maintain improved housing on the reservation. The present land base of the reservation does not provide an area sufficient to meet the present or future needs of the Cocopah tribe. The additional acreage sought in this proposal will provide the land needed to provide adequate living space essential to family health and stability.

D. HEALTH

Improving the physical and mental health of the reservation community through improved facilities and community education is a continuing goal of the Cocopah Tribe. Community efforts are directed to reduce the incidence of alcoholism and other preventable diseases, through improved education, housing and employment opportunities.

E. RECREATION

The existing Cocopah Indian Reservation has very limited recreational facilities. The distance of the reservation from community parks and playgrounds in the Yuma and Somerton area makes it particularly important that more recreational areas be established for the reservation communities Due to the present limited reservation land area, recreational, housing, and agricultural uses have to compete for space resulting in an inability to develop required basic community services.

The additional lands will provide space for the Tribe to realize their goal to develop communities that provide a healthy community environment.

F. SOCIAL AND CULTURAL

The primary goal of the Cocopah Tribal Government is to improve the quality of life of tribal members living on the reservation. This objective is addressed in all phases of program planning and implementation, particularly in the areas of education, health, housing, employment and resource development.

The importance of Cocopah cultural and spiritual heritage to the individual's identity and self-pride is recognized by the tribal government. The tribal government is dedicated to insure that in the development of reservation resources, provision is made to protect and perpetuate the traditions and rituals of the Cocopah culture.

In summary, the one paramount ingredient essential to the Tribe's ability to realize the established tribal goals is a land area of sufficient size to provide space, for family living, community and health facilities, recreation, industrial and commercial developments. The 3,930 acre proposed addition to the reservation provides the necessary land base to accomplish tribal goals.

V. RESERVATION PLAN

A. GENERAL DESCRIPTION (See Figure II)

The Cocopah Indian Reservation is comprised of lands located in three separate areas situated close to the City of Yuma in the southwest corner of Yuma County. Each area has its own identity and description as follows:

East Cocopah

Located approximately three miles southeast of Somerton and 10½ miles south of Yuma with a land area of 160 acres. Access to this area is provided by a road which follows the banks of the East Main Canal or by way of Avenue "D" which heads south from U.S. Highway 95.

West Cocopah

Located in T 9 S, R 25 W, Gila Salt River, Base and Meridian, on the extreme western edge of Yuma County with the Colorado River as its western boundary and a land area of approximately 1,612 acres. The Community of Somerton is 5½ miles to the southeast and the City of Yuma is 10 miles northeast. A large part of the reservation (1,238.55 acres) was obtained late in 1974 due to accretion of lands caused by the meander of the Colorado River.

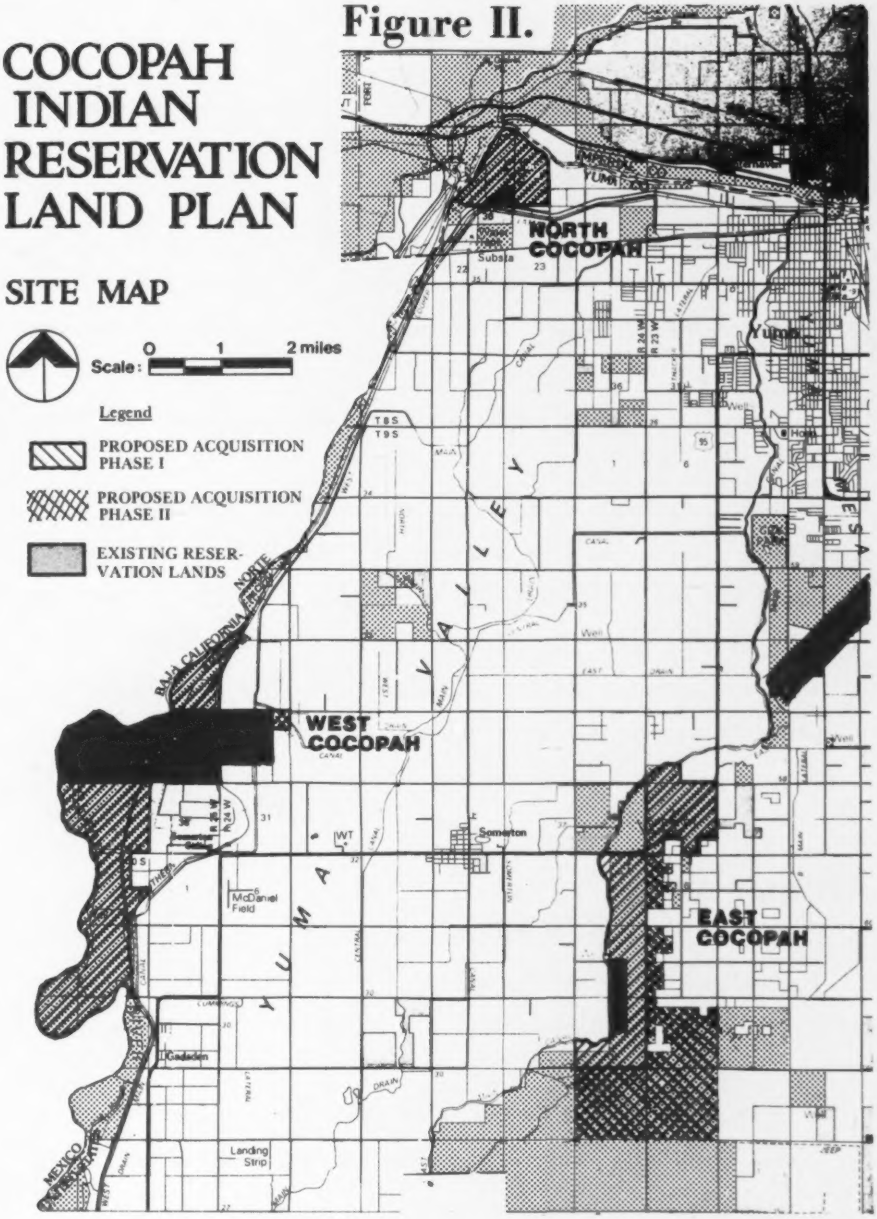
North Cocopah (Lots 5 & 6)

Located in T 16 S, R 21 E, San Bernadino, Base and Meridian, Lots 5 and 6 were set aside from the public domain for the use of the Cocopah Indians by an agreement between the Bureau of Indian Affairs and the Bureau of Reclamation, dated March 21, 1956. This "use permit" was granted for a period of 50 years and expires January 16, 2006. There are approximately 61 acres on this part of the reservation, approximately six miles southeast of Yuma.

The Cocopah Indian Reservation is located in the proximity of the City of Yuma, and its surrounding area and the international boundary of U.S. and Mexico characterized by rapid growth of urbanization.

The State's 1978 Economic Demographic Projection model indicates a county population growth of 67,100 to 105,300 between 1975 and 1995, representing an average yearly increase rate of 2.8 percent. Likewise the official 1980 Census counts indicate that the City of Yuma has

Figure II.



COCOPAH INDIAN RESERVATION LAND PLAN

SITE MAP

a population of 42,433 within its municipal boundaries. The decade of the 70's produced a 46.3 percent increase in population.

Aside from the increase in population as an indicator of the area's urbanization, the significance of the Yuma area as a hub of institutional, recreational, commercial, and agricultural development is also increasing.

The development trend in this area creates a ripple effect on the Cocopah Indian Reservation. This provides the tribal members with opportunities to improve their current employment levels and the Cocopah Indian Reservations to capture the growth patterns through the development of existing lands and any future acquired land. The tribe recognizes the need to capitalize on these opportunities and trends in order to bring the Tribe to a level of economic independence.

The rapid growth of the area can be summed up by the five factors mentioned in the Yuma County Planning Department report of January, 1979 titled "Land Use Characteristics in Southwest Yuma" as follows:

> 1) A strategic location on major transcontinental railway and highway routes in proximity to California markets; 2) An attractive desert climate; 3) Extensive local federal investments in both military and civilian operations. 4) Plentiful water to support an extensive agricultural base as well as other uses; 5) Aggressive economic development policies on the part of local officials.

B. EXISTING LAND USES

The categories of the exisiting land uses are as follows:

1. Residential – Individual homesites, tribal homesites subdivision, leased homesite areas.
2. Agricultural – All irrigated and undeveloped crop land, and previously farmed land not currently under cultivation.
3. Institutional/Community Facilities – Tribal administrative buildings, cemetery, cry house, Head Start buildings, recreational areas, and multipurpose building.

TABLE V

Cocopah Reservation – Existing Land Use

	East	%	West	%	Lots 5 & 6	%	Total	%
Residential	148	8.0	50	2.7	61	3.3	259	14.3
Institutional	4	.2	10	.5	–	0	14	.7
Agriculture	8	.4	1,552	84.6	–	0	1,560	85.
	160		1,612		61		1,833	100

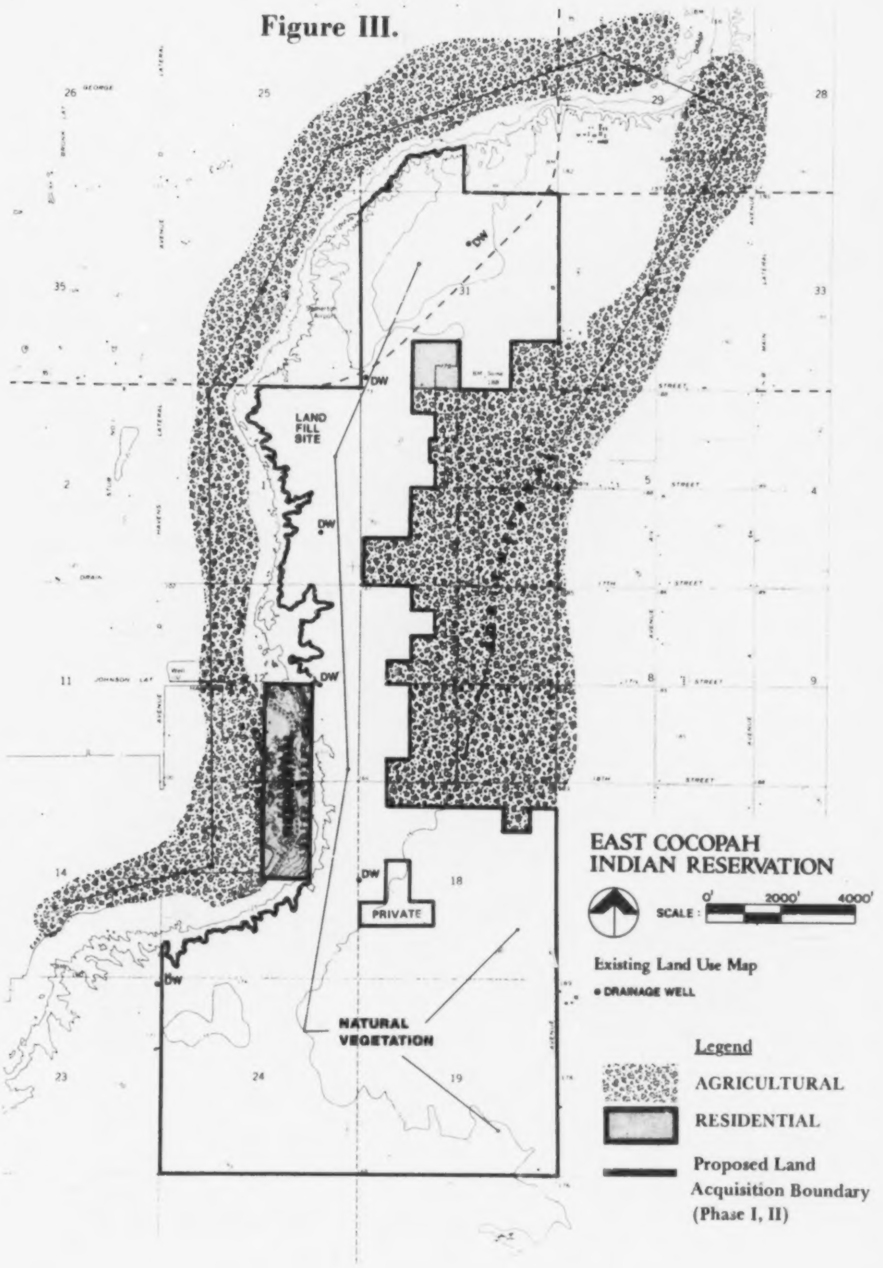
1. East Cocopah (See Figure III)

   a. Residential

The residential land use is predominantly occupying 8% (148 acres) of the Cocopah Indian Reservation. There are several H.U.D. units built with indoor plumbing and sewage facilities meeting public health codes. A water system was designed and built by the Indian Health Service to serve all homes. Roads and water distribution lines and roads were constructed by BIA.

HOUSING – EAST COCOPAH

Figure III.


26
GEORGE
25
28
29
35
31
33
DW
DW
LAND
FILL
SITE
STREET
2
1
5
4
DW
17TH
STREET
11
JOHNSON LAT
12
DW
8
STREET
9
18TH
STREET
HAVENS
LATERAL
AVENUE
DRAIN
14
DW
18
PRIVATE
DW
NATURAL
VEGETATION
23
24
19
EAST COCOPAH
INDIAN RESERVATION
SCALE :
0'
2000'
4000'
Existing Land Use Map
● DRAINAGE WELL
Legend
AGRICULTURAL
RESIDENTIAL
Proposed Land
Acquisition Boundary
(Phase I, II)

b. Agricultural

Only 8 acres of land is usable for agriculture which reflects that there is a limited agricultural use of the land at East Cocopah.

c. Institutional

The institutional land base represents the cemetery, cry house, multi-purpose, head start, church and a small playground occupying 4 acres. Existing facilities include well, pump, and storage tank for the water systems.

d. Ownership

All lands in the East Cocopah reservation are Tribal lands.

e. Utilities, Easement, Access

The East Main Canal owned by the Bureau of Reclamation runs through the existing 160 acres. The electricity was brought to the area by the Arizona Public Service Company.

2. West Cocopah (See Figure IV)

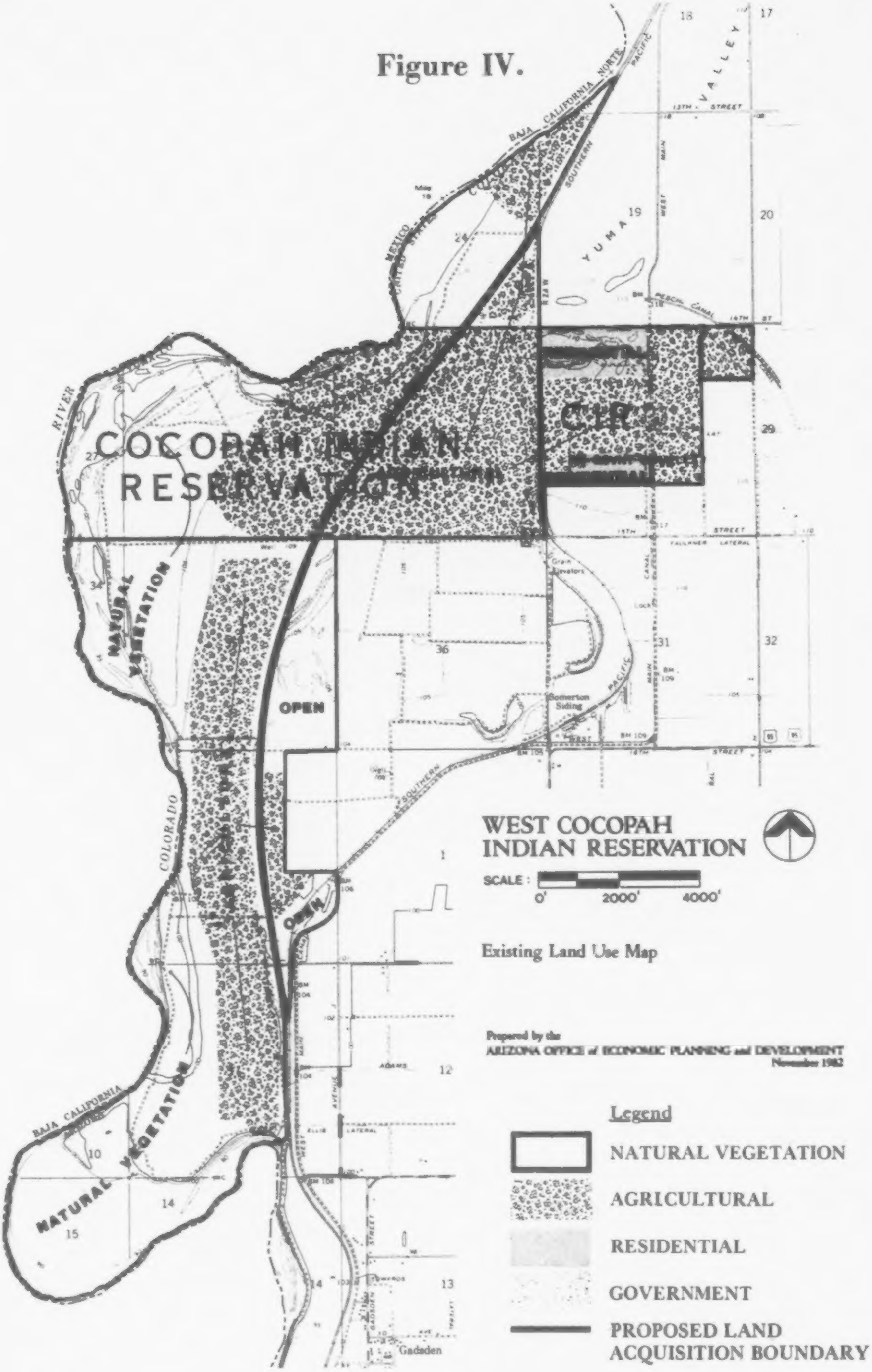
a. Residential

The residential land use in West Cocopah represents 2.7% (50 acres) of the reservation lands. A subdivision is located in the north portion of the reservation. Several new H.U.D. units are completed and occupied. The Public Health Service designed the water system and installed the existing well. Roads were constructed by B.I.A.

b. Agriculture

Land use in West Cocopah is predominantly agriculture and serves as the main economic resource for the tribe. Recently, four hundred and sixty five (465) acres were developed for cotton production. There are also six hundred (600) acres presently being developed and are leased out to non-Indian farmers. At present the Cocopah tribe has 10,197 acre feet of water right as confirmed by a recent decision contained in the Master's Report in Arizona v. California.

Figure IV.


COCOPAH INDIAN RESERVATION
CIR
NATURAL VEGETATION
AGRICULTURAL
OPEN
COLORADO
RIVER
BAJA CALIFORNIA NORTE
BAJA CALIFORNIA
UNITED STATES
MEXICO
SOUTHERN PACIFIC
YUMA VALLEY
13TH STREET
15TH STREET
16TH STREET
WEST MAIN CANAL
FAULKNER LATERAL
Grain Elevators
Somerton Siding
ADAMS
ELLIS LATERAL
EDWARDS
Gadsden
Mile 18
18
17
19
20
24
27
29
31
32
34
36
1
10
12
13
14
15
WEST COCOPAH
INDIAN RESERVATION
SCALE :
0'
2000'
4000'
Existing Land Use Map
Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982
Legend
NATURAL VEGETATION
AGRICULTURAL
RESIDENTIAL
GOVERNMENT
PROPOSED LAND ACQUISITION BOUNDARY

NEW AGRICULTURAL DEVELOPMENT – WEST COCOPAH

c. Institutional

The institutional area contains the administrative tribal building, mechanic shop, halfway house and a cemetery.

d. Ownership

All these lands are tribal lands.

e. Utilities, Easement, Access

West Cocopah Reservation has 200 feet levee and canal easement by the Bureau of Reclamation and a railroad right of way.

3. North Cocopah (Lots 5 & 6 Map III) (See Figure V)

a. Residential

On January 16, 1956, a Memorandum of Agreement between the Bureau of Reclamation transferred administrative jurisdiction of Lots 5 and 6 to the Bureau of Indian Affairs for use by the Cocopah Tribe. It prohibits the erection of any permanent structure or improvement on the land. This prohibition against permanent structures was further substantiated by Executive Order No. 11296, dated August 10, 1966, entitled Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads and Other Facilities and in Disposing of Federal Lands and Properties. These restrictions prohibit the residents from establishing permanent homesites and precludes other economic developments which require permanent facilities unless elevated above flood stage. This residential use occupied the entire 60 acres of North Cocopah (Lots 5 & 6). Within this residential area there is a community building erected.

b. Ownership

This land is BLM land leased to the Cocopah Indian Tribe.

VI. PROPOSED LAND USE PLAN

The objectives of the proposed land use plan are to provide over-all development guideline for the tribe and the neighboring communities on the intended utilization of acquired lands to augment the existing Cocopah Indian Reservation. The plan is intended as a development guide, recognizing the modification in area size, improvements and types of utilization may be required due to the economic feasibility, environmental considerations, and other mitigating factors.

TABLE VI

PROPOSED LAND ACQUISITION

RESERVATION COMMUNITY	Prop. Land Acq. (acres)	Existing Land (acres)	Total Reservation Land (acres)
EAST COCOPAH	1570	160	1730
WEST COCOPAH	1784	1612	3396
NORTH COCOPAH lots 5 & 6	576	61*	576
TOTAL	3930	1772	5702

*BLM Land Tribal Lease

1. EAST COCOPAH: (See Figure VI)

The following lands are proposed to be acquired at the East Cocopah:

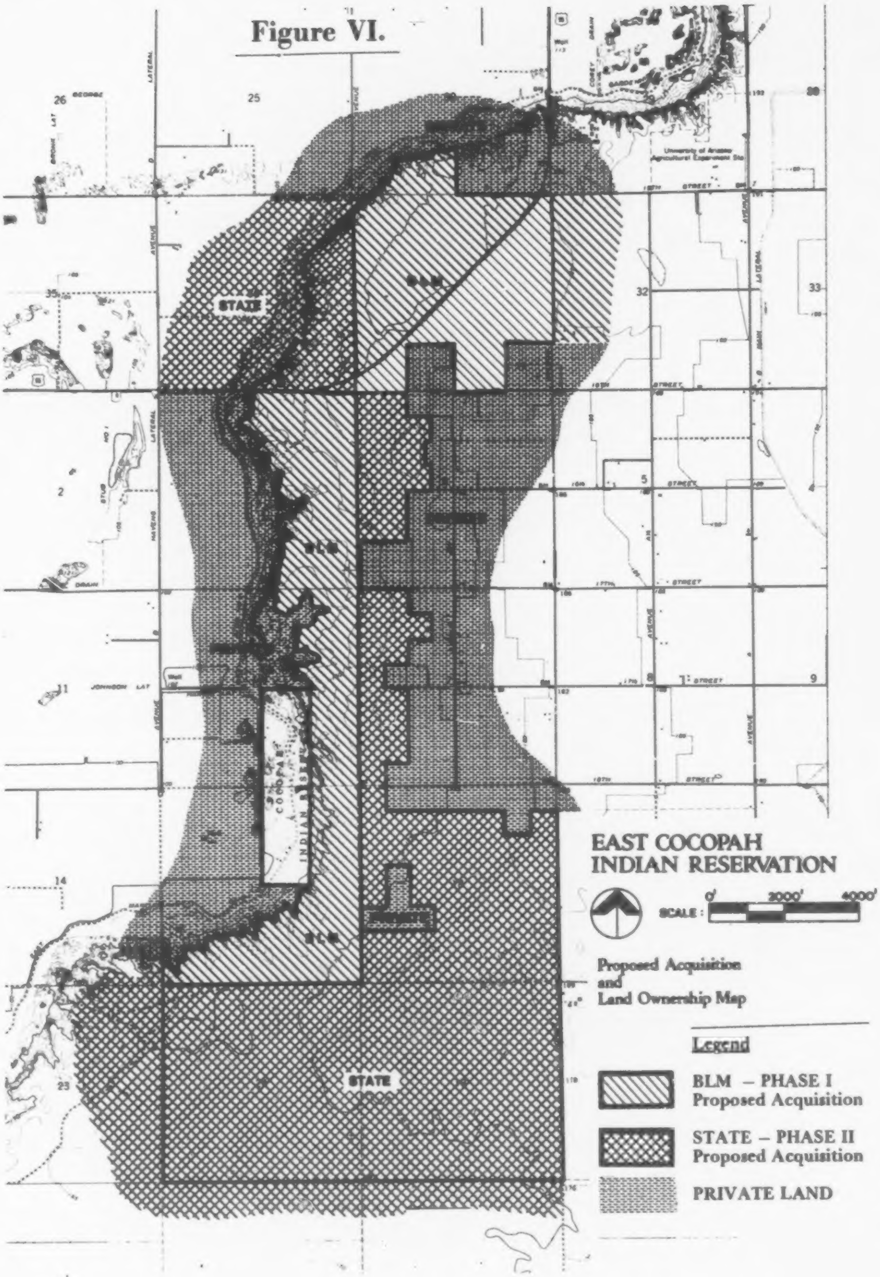
As part of East Cocopah, Gila and Salt River Base and Meridian, Arizona, containing 1570 acres more or less.

T.9S., R.23.W.

Sec. 30 within S/2 along bluff approximately 50+ acres.

Sec. 31: NW/4 160+ acres
NE/4 160+ acres
W/2, SW/4 80+ acres
N/2, E/2, SW/4 40+ acres
W/2, SE/4 80+ acres
N/2, E/2, SE/4 40+ acres

Figure VI.



STATE
BLM
COCOPAH INDIAN RESERVATION
BLM
BLM
STATE
EAST COCOPAH
INDIAN RESERVATION
SCALE : 0' 2000' 4000'
Proposed Acquisition
and
Land Ownership Map
Legend
BLM – PHASE I Proposed Acquisition
STATE – PHASE II Proposed Acquisition
PRIVATE LAND
University of Arizona Agricultural Experiment Sta.
STREET
AVENUE
LATERAL
DRAIN
26
25
35
32
33
2
5
4
11
8
9
14
23

T.10S., R.24.W.

Sec. 1: E/2 meandering along east main canal approximately 320+ acres

Sec. 12: NW/4 meandering along east main canal approximately 60+ acres

NE/4 160 acres

E/2, SE/4 80 acres

Sec. 13: E/2, NE/4 80 acres

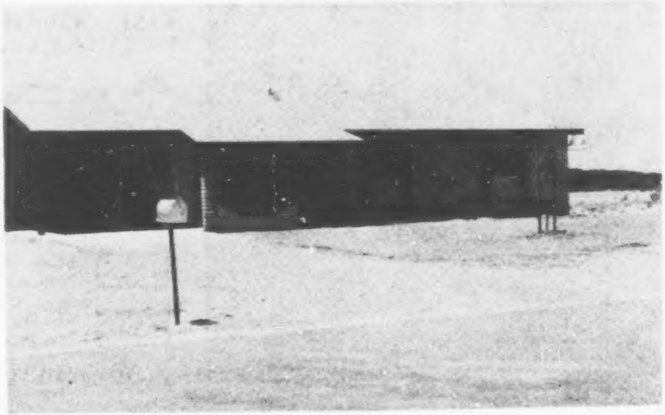
SE/4 160 acres

S/2, SW/4 80 acres

All the lands to be acquired are BLM lands. The areas described for the East Cocopah are to be acquired in PHASE I of the land acquisition process. A Phase II process is anticipated to acquire additional lands contingent to the East Cocopah Reservation.

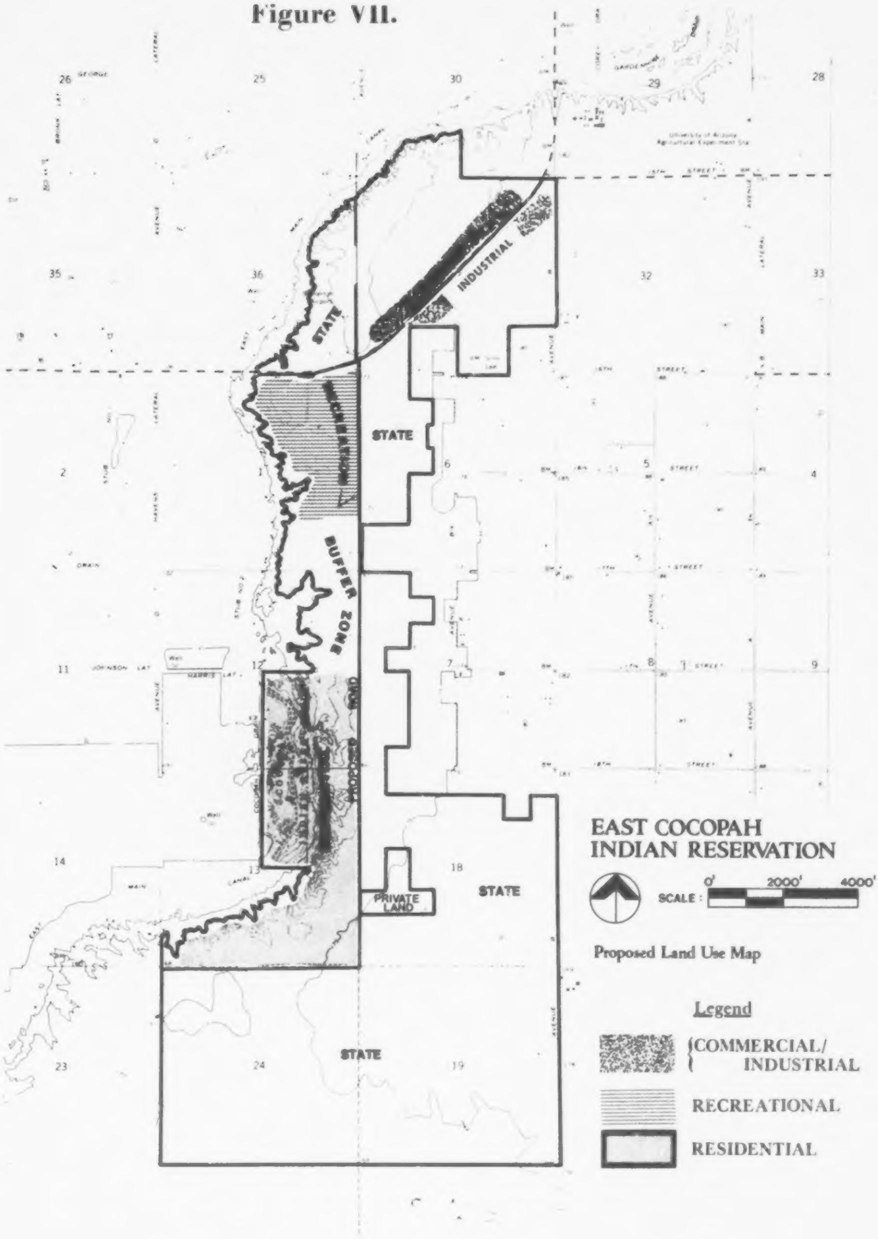
a. Residential (See Figure VII)

There is a limited agriculture potential on the 160 acres. The predominant existing land use is residential. It is proposed that the residential area be expanded to an additional 200 acres directly east and south of the existing reservation. Due to the undulating terrain and unstable sand, the density of housing will average approximately one house per 1½ acres.



EAST COCOPAH HOUSING

Figure VII.


EAST COCOPAH
INDIAN RESERVATION
SCALE :
0'
2000'
4000'
Proposed Land Use Map
Legend
COMMERCIAL/
INDUSTRIAL
RECREATIONAL
RESIDENTIAL
STATE
INDUSTRIAL
RECREATION
BUFFER ZONE
PRIVATE LAND
26
25
30
29
28
35
36
32
33
2
1
6
5
4
11
12
7
8
9
14
13
18
23
24
19
University of Arizona Agricultural Experiment Sta.
STREET
AVENUE
LATERAL
MAIN
CANAL
JOHNSON LAT
HARRIS LAT
DRAIN

b. Recreational

With the increase of residential area, and proposed commercial or industrial area at the East Cocopah, there is a need to develop a recreational area. The existing land fill is proposed to be converted into a recreational area after its completion. Possible land uses for this area include golf course, driving range, and park.

c. Commercial/Industrial area

The lands located on Section 30 and 31 are proposed to be used and developed as commercial or industrial area. Commercial development includes mobilehome/trailer park, and commercial amenities needed to support this development. Another development alternative is industrial park to house light industries. These land uses are compatible to other land uses in the surrounding area. Such development can enhance employment of tribal members on the reservation and can stimulate a diversified economy.

d. Circulation Pattern

A 24-foot wide asphalt road is proposed as shown on the maps for access to the residential area and for development of lands adjacent to the road.

2. WEST COCOPAH (See Figure VIII)

The following lands are proposed to be acquired at the West Cocopah:

a) As part of the West Cocopah, Gila and Salt River Base and Meridian, Arizona, containing 1784 acres more or less.

T.9S, R.24.W.

Sec. 18 & 19: lots 24, 25

Sec. 30: lots 18, 19,

T.9S., R.25.W.

Sec. 24: lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

Sec. 34: lots 1, 2

Sec. 35: all within the United States.

T.10S, R.25.W.

Sec. 2: lots 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27

Sec. 10: lots 1, 2

Sec. 11: lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

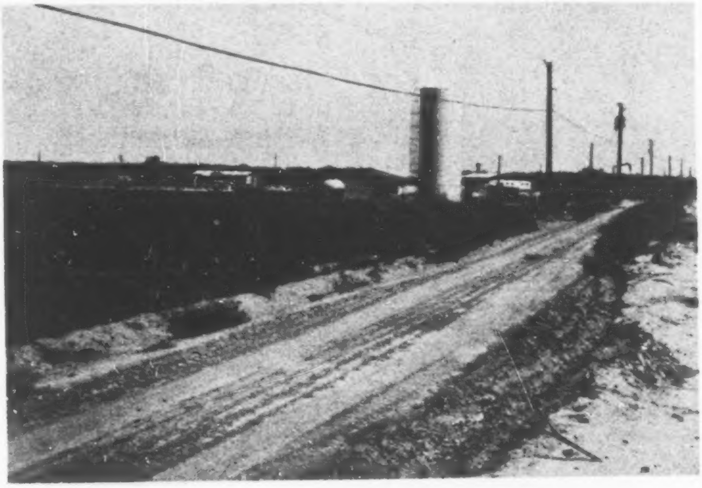
Sec. 14: lots 8, 9

Sec. 15: lots 5, 6, 7

All the lands to be acquired are BLM lands contingent to the West Cocopah Indian Reservation.

a) Residential (See Figure IX)

With the increasing number of tribal community members and future expansion of government and administrative jurisdiction and programs, there is a need to increase the residential and institutional area in its present location. It is proposed that the entire 193 plus acres be designated as residential area and institutional area. This would include improvement and expansion of the tribal recreational area to service the tribal members.



RESIDENTIAL AREA – WEST COCOPAH

Figure VIII.

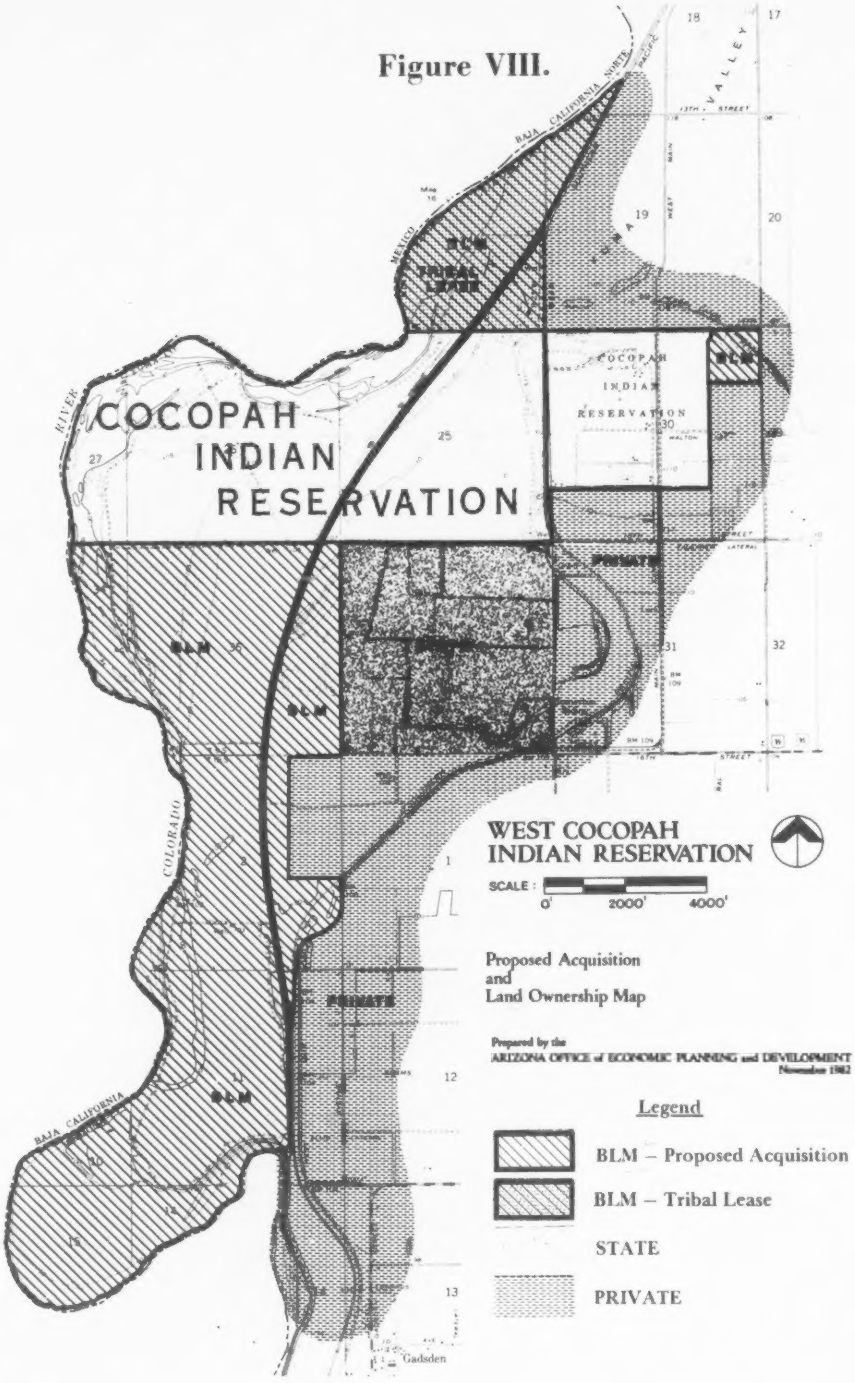
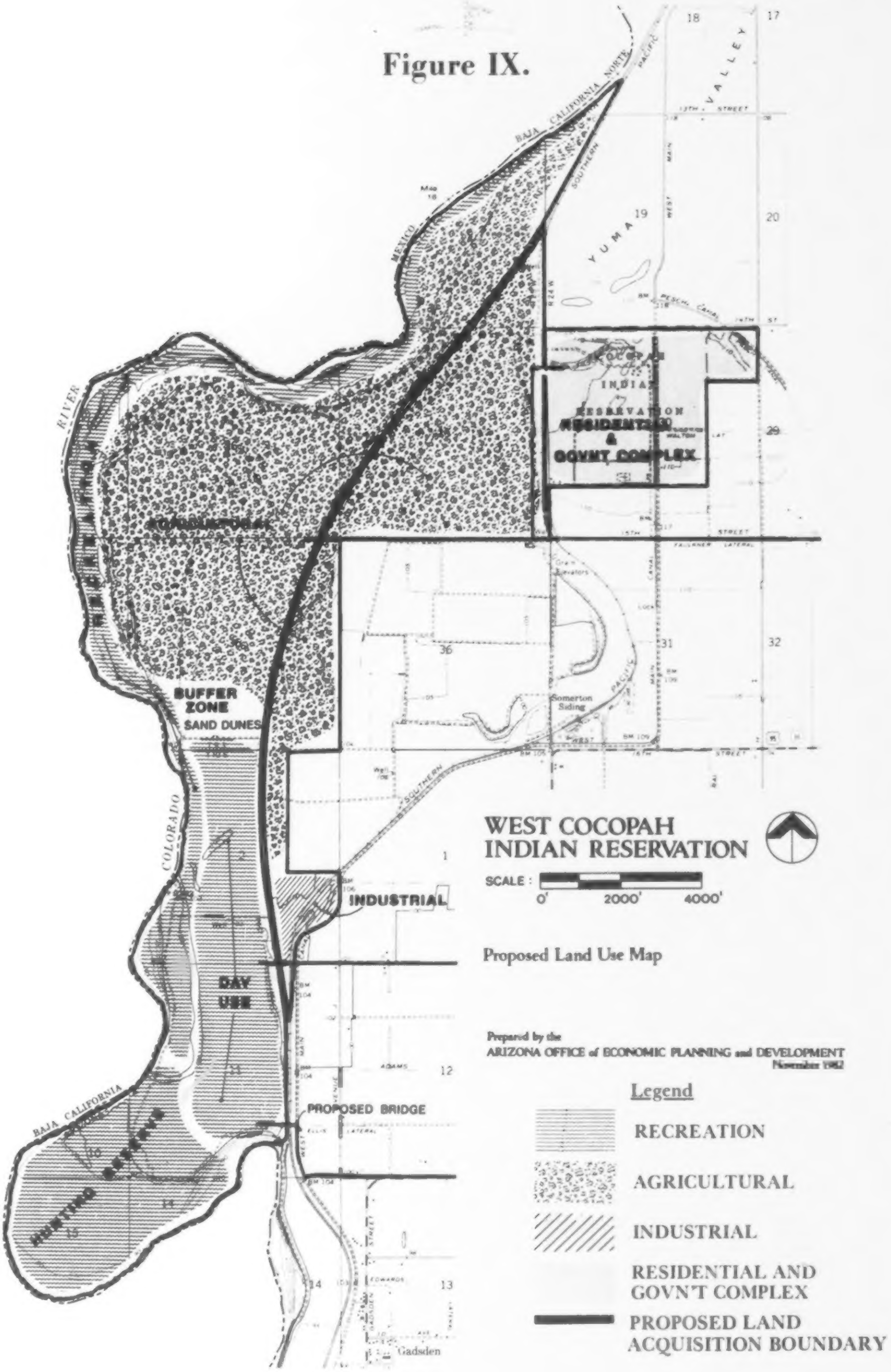
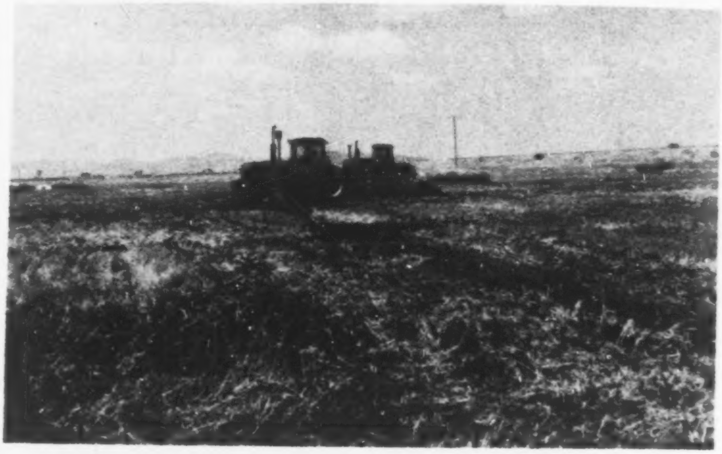

WEST COCOPAH
INDIAN RESERVATION
SCALE :
0'
2000'
4000'
Proposed Acquisition
and
Land Ownership Map
Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982
Legend
BLM – Proposed Acquisition
BLM – Tribal Lease
STATE
PRIVATE
COCOPAH
INDIAN
RESERVATION
BLM
TRIBAL
LEASE
PRIVATE
RIVER
COLORADO
MEXICO
BAJA CALIFORNIA NORTE
BAJA CALIFORNIA
PACIFIC
VALLEY
12TH STREET
16TH STREET
WALTON
WEST MAIN
Gadsden
17
18
19
20
25
27
30
31
32
35
1
2
11
12
13
14
15

Figure IX.


WEST COCOPAH
INDIAN RESERVATION
SCALE :
0'
2000'
4000'
Proposed Land Use Map
Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982
Legend
RECREATION
AGRICULTURAL
INDUSTRIAL
RESIDENTIAL AND
GOVN'T COMPLEX
PROPOSED LAND
ACQUISITION BOUNDARY
COCOPAH
INDIAN
RESERVATION
RESIDENTIAL
&
GOVNT COMPLEX
BUFFER
ZONE
SAND DUNES
INDUSTRIAL
DAY
USE
HUNTING RESERVE
PROPOSED BRIDGE
COLORADO
RIVER
BAJA CALIFORNIA NORTE
MEXICO
BAJA CALIFORNIA
YUMA
VALLEY
SOUTHERN PACIFIC
13TH STREET
14TH ST
15TH STREET
16TH STREET
Somerton Siding
Grain Elevators
ADAMS
EDWARDS
Gadsden
18
17
19
20
29
31
32
36
1
12
13
14

b. Agricultural

The West Cocopah contains approximately 465 acres currently under cultivation. One of the primary objectives of the Cocopah Tribal Government is to develop all of the irrigable agricultural lands of the reservation. These lands presently and in the forseeable future are substantial sources of tribal income. Of the proposed acreage the Cocopah Indian Tribe is seeking to obtain, a portion of the land is under cultivation by non-Indians under one year permits issued by the Bureau of Land Management. If the tribe is successful in acquiring the additional lands, the current agricultural acreage will remain in production and the tribe will continue to honor the existing leases. In the future the tribe may reappraise the lands and lease at fair market value or the tribe can establish their farming enterprise.



AGRICULTURAL LAND – WEST COCOPAH

c. Commercial and Recreational

The presence of the Colorado River and other recreational resources in the area make a very good potential for commercial/recreational development. The proposed revenue producing recreational enterprises are feasible which would enhance the use of the area at present. Through fees/permits, the tribe can generate revenues from activities such as hunting, day use, and other recreational activities for Indians and non-Indians. Facilities can be built to enhance recreation.

A buffer area is proposed between the agriculture and hunting area. This area contains large sand dunes that have recreational possibilities for all terrain vehicle use.

d. Industrial

With the presence of the Southern Pacific Railroad parallel to a paved access road, a possible industrial development is proposed. This transportation network is useful in carrying raw materials and finished products from the source to the markets. The tribe realizes that modern day agricultural methods and technology is resulting in the industry becoming less and less labor intensive, providing fewer employment opportunities for the tribal members. In view of this, the Cocopah governing body determined that the acquisition of additional lands to augment the reservation resource base is necessary in order to provide an economic environment conducive to diversified industrial growth and expansion of the employment opportunities on the reservation.

e. Circulation Pattern

It is proposed that the road servicing the reservation from Highway 95 below Somerton be improved by widening the road and changing the alignment of the curves. It is also proposed that an additional bridge be located in the southeast part of the proposed land to be acquired. The bridge will provide access to the recreational areas.

3. NORTH COCOPAH (Lots 5 & 6) (See Figure X)

The following lands are proposed to be acquired at the North Cocopah (Lots 5 & 6):

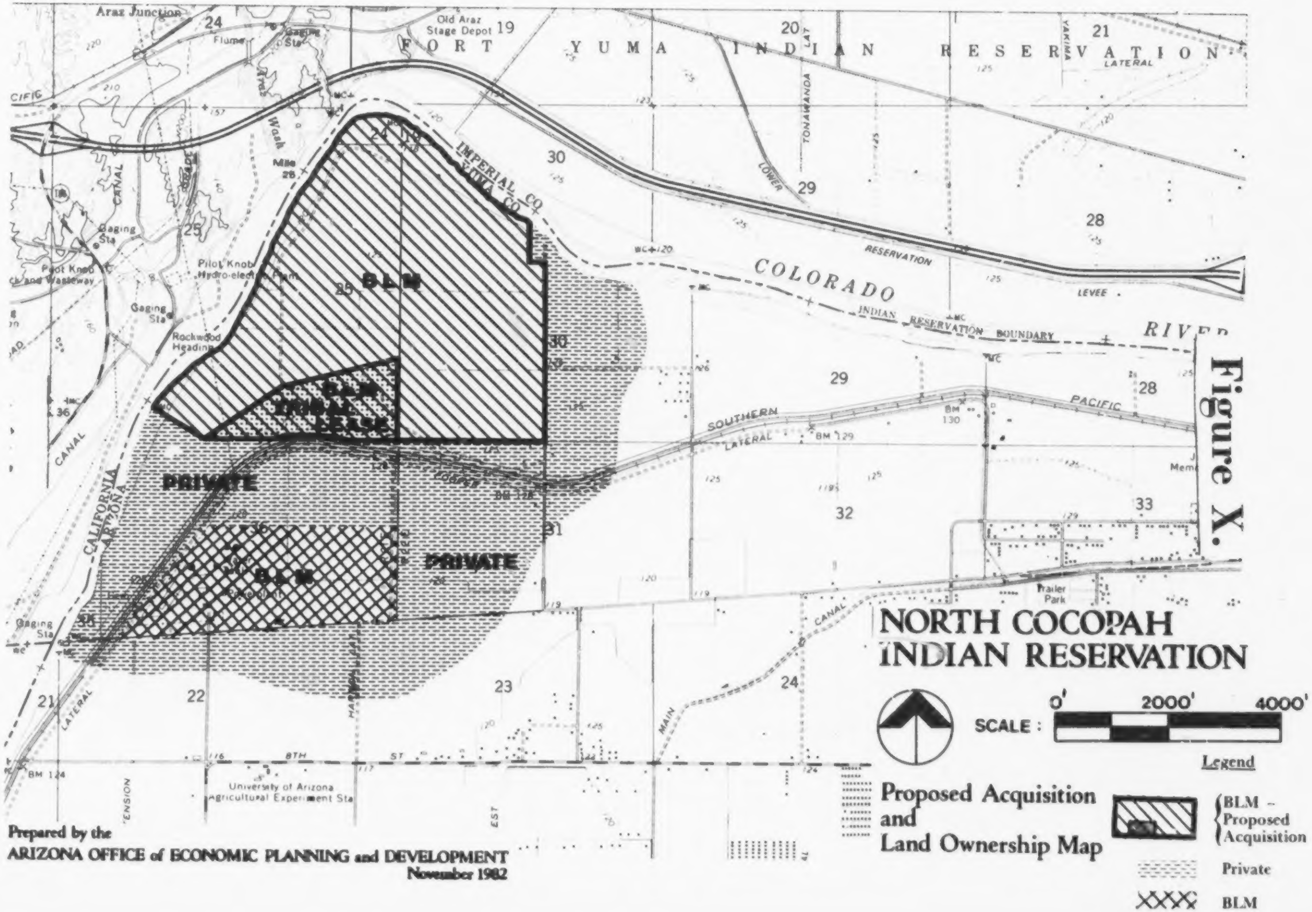
c) As North Cocopah, San Bernardino Base and Meridian, Arizona containing 576 acres more or less.

T.16S., R.21.E.

Sec. 25: lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

Sec. 24: lot 7

Figure X.



NORTH COCOPAH
INDIAN RESERVATION

Proposed Acquisition
and
Land Ownership Map

SCALE : 0' 2000' 4000'

Legend

▨ BLM – Proposed Acquisition

Private

BLM

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November 1982

T.16S., R.22.E.

Sec. 19: lot 11

Sec. 30: lots 11, 12, 13, 19, 20, 22.

All lands to be acquired are BLM lands.

a. Residential (See Figure XI)

It is proposed that 61 acres of the area be reserved for residential development slightly changing the shape to allow for better design lay-out and function of utilities. The tribe is aware that permanent structures will not be allowed until land is elevated above the flood plain. The acquired area is proposed mobile home area development.

MOBILE HOME AREA – NORTH COCOPAH (LOTS 5 & 6)

b. Agricultural

The reservation is presently divided into three areas, namely; residential (61 acres), agricultural, and a 200 foot buffer area composed of trees, brush and undergrowth. It is proposed that the acreage under cultivation remain as agricultural by continuing to honor the leases. In the future, the lands will be reappraised and be leased out at fair market value and/or establish a tribal farming enterprise.

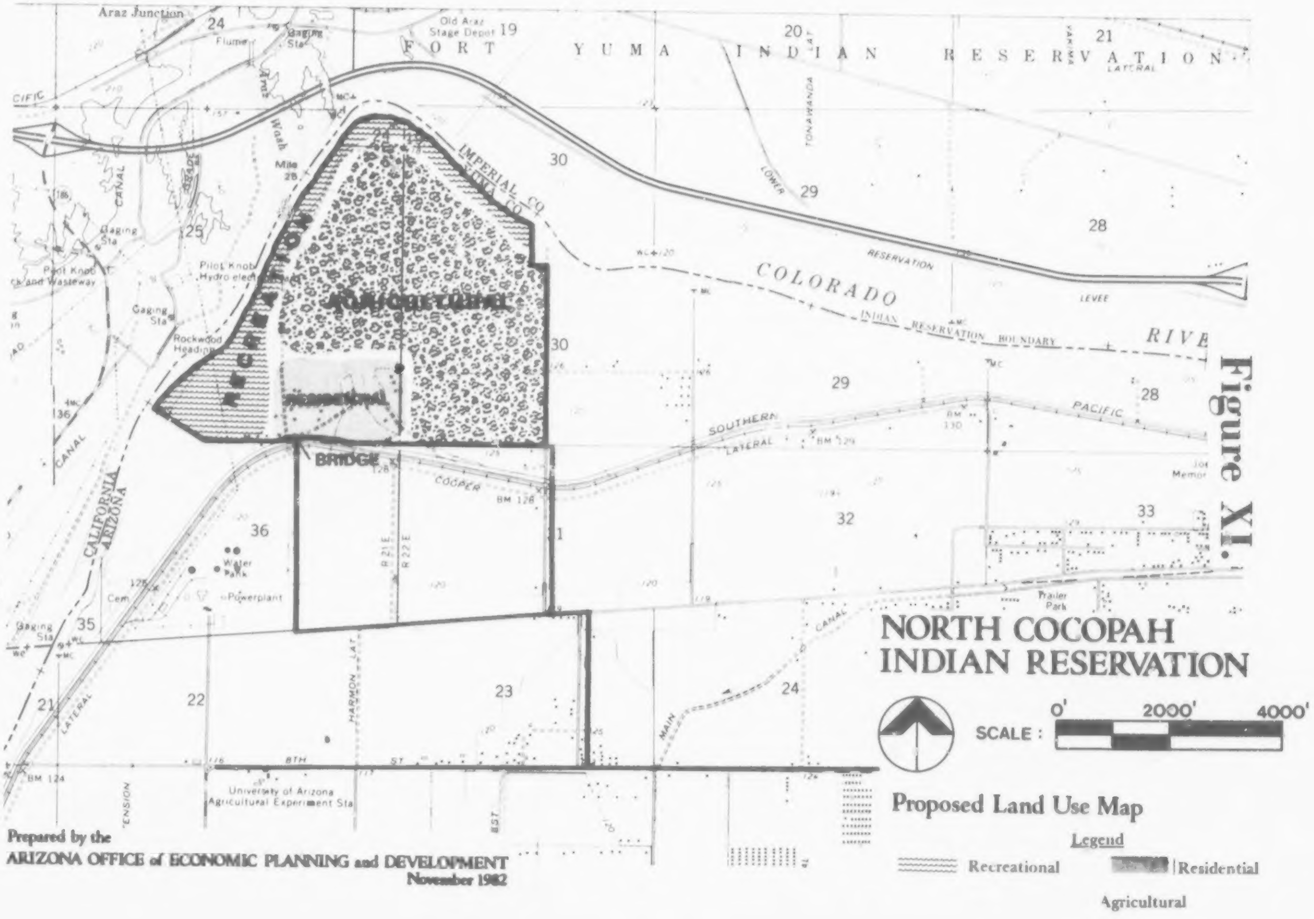
c. Commercial and Recreational

There is an excellent potential for the development of a day use water recreation and travel trailer park. The river, with potential fishing along the 10,000 feet of shoreline, makes this area very desirable for the winter visitor and tourism revenue.

d. Circulation Pattern

It is proposed that the existing bridge to the residential, agriculture, and recreational area be widened to a two-way road to accomodate the increased traffic flows. The road approaching the bridge is proposed to be widened from 8th Street to eliminate the bottleneck and traffic hazard.

Figure XI.



NORTH COCOPAH
INDIAN RESERVATION

SCALE : 0' 2000' 4000'

Proposed Land Use Map

Legend

▤ Recreational
▨ Residential
Agricultural

Prepared by the
ARIZONA OFFICE of ECONOMIC PLANNING and DEVELOPMENT
November 1982

VII. IMPACTS AND MITIGATIONS

A. ECONOMIC AND COMMUNITY SERVICES

The Cocopah Indian Tribe land proposal requests the acquisition of 3930 acres of "Public Domain" lands, administered by the Bureau of Land Management, to augment their present reservation land base. The economic impacts of the land acquisition are:

(1) Increase of land base to hold substantial commercial, industrial, recreational, and agricultural development for the tribe. These acquired lands will provide opportunities for tribal enterprises, and/or joint ventures with private developers;

(2) Increase the availability of activities to generate revenues and income for tribal administration, government, and employment for tribal members.

(3) Increase the tribal income to fulfill social-economic, recreational, and cultural goals of the tribe, and provide effective and sufficient community services to the tribal communities.

B. ENVIRONMENTAL

Planned tribal uses of the lands requested to be added to the Cocopah Reservation under this proposal are environmentally compatible with current uses. The proposed development plans do not pose a threat to the quality of life in the area. Development of Indian Trust Lands are assessed in accordance with guidelines prescribed by the Environmental Protection Act.

C. RIGHTS-OF- WAY, EASEMENTS, LAND LEASES

The Cocopah Tribal Government recognizes and will honor the terms and conditions of all legally described and approved right-of-ways and easements granted by the United States on the lands proposed to be acquired under this plan. The Tribe recommends that the person presently utilizing these lands under the Bureau of Land Management retain eligibility to continue this use under revocable permits issued by the Cocopah Tribe and approved by the Bureau of Indian Affairs. The annual fee for these permits will be based on the fair market value of the land, established by a Bureau of Indian Affairs appraisal. Present permittees will be provided opportunity to negotiate leases through the Bureau of Indian Affairs for the use of lands acquired in accordance with the procedure contained in 25 C.F.R. 131.

VIII. PLAN IMPLEMENTATION

1. LEGISLATION ON THE LAND ACQUISITION

The basic legal tool to implement the proposed land use plan for the tribe is the enactment and passage of the legislative act introduced to Congress to acquire the lands.

2. DEVELOPMENT PLANNING

A continuous development plan will coordinate all planning efforts for the tribe. These efforts will devise planning documents to guide the implementation of the proposed land uses in the actual land development.

3. DEVELOPMENT STRATEGY

There are three development strategies which can be undertaken, namely;

a) Development of tribal enterprises to generate tribal income.

b) Promotion of joint ventures with private developers for land and business development.

c) Encouragement of land leases to private developers.

4. CAPITAL IMPROVEMENT PROGRAMS

Construction of roads, water and sewage system, and other public works to enhance the development of these areas.

5. TRIBAL ORDINANCES/REGULATIONS

The enactment of tribal ordinances/regulations to enforce the conformance to the different land uses to ensure the effective utilization and management of tribal resources.

Senator DECONCINI. We will now proceed to S. 2823. Our first witness will be John Fritz, Deputy Assistant Secretary for Indian Affairs.

Good morning, Mr. Fritz. How are you this morning?

Mr. FRITZ. I am fine, thank you. How are you, Mr. Chairman?

Senator DECONCINI. I am well.

Thank you for being with us.

Mr. FRITZ. Thank you very much. I have a complete statement for the record, if we could have that entered in toto, and I will give a brief summary.

Senator DECONCINI. Without objection, it will be included in the record in its entirety.

Mr. FRITZ. Thank you very much, Mr. Chairman.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. FRITZ. Mr. Chairman and members of the committee, I am pleased to be here today to present the views of the Department on S. 2823, to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 59 and 13-E before the Indian Claims Commission and docket No. 13-F before the U.S. Claims Court, and for other purposes.

While we support the concept of S. 2823, we object to the bill as presently drafted and offer a substitute for your consideration.

S. 2823 would provide for the distribution of funds appropriated to pay judgments to the Saginaw, Swan Creek, and Black River Chippewas in dockets Nos. 59 and 13-E before the Indian Claims Commission and docket No. 13-F before the U.S. Claims Court. These dockets are more specifically spelled out in my statement. What the bill does is authorize the Secretary of the Interior to transfer these funds to the Saginaw Chippewa Tribe of Michigan in their entirety. The Saginaw Tribal Council would establish a fund known as the Principal Investment Fund. Tribal programs would be administered from this fund. Upon the transfer of the funds, the Secretary would have no further trust responsibility for the investment, supervision, administration, or expenditure of such funds. The sole beneficiary of the judgment funds in all three dockets would be the Saginaw Chippewa Tribe of Michigan.

Our research report recommended that the funds be divided between the Saginaw Chippewa Tribe of Michigan and the Saginaw Chippewa descendants on the basis of the numbers in each group as designated on the payment roll, approved January 28, 1977, for the distribution of the Saginaw Chippewa Indians' judgment funds in the Indian Claims Commission docket No. 57. On that basis, we proposed that the judgment be apportioned 3,243/4,134ths or 78.4470 percent to the Saginaw Chippewa descendants. That descendant group would receive their share on a per capita basis. The Saginaw Chippewa tribal group would be required to develop a tribal proposal for its apportioned share.

While we commend the tribe for its willingness to program a large percentage of these funds, we must object to S. 2823 because it ignores almost 80 percent of the proposed beneficiaries of these awards as well as removing the funds from the Secretary of the Interior's responsibility for carrying out the trust.

We thus object to this proposed legislation on two major grounds: No. 1, it removes a group of recommended beneficiaries, and, No. 2, the funds would be removed almost immediately from the Secretary's trust responsibilities. We recommend a substitute bill, enclosed for your consideration, and we stand ready to work with the committee, the tribe, and other interested parties.

This concludes the synopsis of my statement. I would be happy to answer any questions which you might have, Mr. Chairman.

Appearing with me today is Mr. Robert Pennington of the Indian Services staff at the Bureau of Indian Affairs.

Senator DeConcini. Thank you, Mr. Fritz, Mr. Pennington.

Mr. Fritz, how much money is currently on deposit under docket 59, 13–E and 13–F, and how would it be divided if we follow the same plan that was followed under docket 57?

Mr. Fritz. Currently, dockets 13–E, 13–F, and 59 total approximately $7.68 million, as of June 30, and roughly 21 percent would go to the tribe. So, I will do a quick arithmetic——

Senator DeConcini. $1.2 million, I am told, would go to the tribe?

Mr. Fritz. Roughly, yes, somewhere in that range. I apologize for not having that exactly.

Senator DeConcini. What would that amount to for each individual?

Mr. Fritz. From the standpoint of the tribal group, they would program their funds for tribal purposes to include health programs and other tribal government programs. In terms of the remainder, that would be on a per capita basis to the roughly 79 percent of the 4,134 people, and that would just be a division exercise. I am sorry I do not have that at hand.

Senator DeConcini. Let me just understand this. $1.2 million, roughy, would go to the tribe.

Mr. Fritz. Yes, sir, for programing purposes.

Senator DeConcini. That means for however the tribal council wants to spend it?

Mr. Fritz. Yes, sir.

Senator DeConcini. The balance would be distributed under this legislation to members of the tribe on the reservation. Is that right?

Mr. Fritz. No, it would be members of the descendant groups who could be located anywhere in the United States.

Senator DeConcini. Anywhere?

Mr. Fritz. Or anywhere in the world, really, sir.

Senator DeConcini. So, that would leave roughly $6.4 million to be distributed?

Mr. Fritz. Right.

Senator DeConcini. Do we have any estimate of how many people we are talking about, and how much they would get, each one?

Mr. Pennington. We are talking about over 3,000 descendants.

Senator DeConcini. So it would be 3,000 into $6.4 million, roughly.

What other options are there, to not give it to all the descendants?

Mr. Fritz. Yes, that is what the tribe has proposed.

Senator DeConcini. That is what the bill proposes.

Mr. Fritz. Right.

Senator DeConcini. And how many people are we talking about, 800 or 900?

Mr. Fritz. Yes, sir, roughly 900 or just a little bit under 900 in the tribal group.

Senator DeConcini. What is the general precedence, or is there any, on such distributions? Does the law vary on each particular case or is there any conclusion that can be reached that more have gone to the descendants or more have gone just to the tribal members?

Mr. Pennington. Senator, there is always a variance. We try to give it to a modern tribal entity if at all possible, but when we are dealing with descendant groups, as we are in this case, that are well defined historically, that are well known today, and that have shared in a previous judgment for approximately the same time period also with the tribe, we feel that we have to go along with the descendancy group. In other words, if we have a few scattered descendants that may be somewhere in the United States, we are not too concerned with the descendancy entity, but when we are dealing with a defined descendant group, as we are here, we feel that we should go with the descendancy and the tribal entity.

Senator DeConcini. Am I correct, Mr. Fritz, that that is what happended under docket 57? It went to the descendants? Is that correct?

Mr. Fritz. Yes. It was shared by both the tribal group and the descendants.

Mr. Pennington. May I point out that on the previous one it was for an 1819 treaty taking. These deal with treaties of 1805, 1807, and 1817, so they precede, if anything, the 1819 treaty.

Senator DeConcini. What significance do you make of that?

Mr. Pennington. That the injury done to the Indian people was to a group that, of course, no longer exists and was done in that particular historic period, and that both the descendants and the tribe are descended from that injured group.

Senator DeConcini. So, your point is that in docket 57 the distribution was to the tribal members and the descendants.

Mr. Fritz. Yes, sir.

Mr. Pennington. That is correct.

Senator DeConcini. And that came after the taking, that is, the subject matter under docket 59.

Mr. Pennington. That is correct, Senator.

Senator DeConcini. Therefore, not to put words in your mouth, but to be consistent, it would make sense to do one that happened before the same way as the one that has already been distributed.

Mr. Pennington. Yes, sir.

Senator DeConcini. Thank you.

One of the concerns that led to the enactment of the judgment of the Final Distribution Act of 1973 was the failure of the Interior Department to give adequate consideration to use of judgment funds for long-term economic development or program use of judgment funds. Does the Department now have a policy with regard to preferred use of judgment funds and, if so, what is that policy?

Mr. **Fritz**. We prefer, obviously, to see that the tribe put together a sensible program. In this instance, the tribe has put together a sensible program for a long-term basis. We just happen to have a dispute among the tribe and the Department in terms of who should share in it but, frankly, we are looking for the tribal organizations who receive judgments to come to us with an idea of how they want to expend their funds in a logical fashion over a number of years. In a fashion, that would be in keeping with the nature of these assets as being compensation for a harm that was accomplished upon their ancestors in a prior age. These funds become, in effect, a pool of resources which can be utilized for their purposes. So, we are looking for sensible programs and we are willing to really work with the tribal entity in coming up with whatever methodologies they would like to use for these funds to work on their behalf.

Senator **DeConcini**. In a recent letter to Mr. Vander Jagt of the House of Representatives, Mrs. Elbert of your staff indicated that the Department "has no evidence that would preclude the descendents from sharing in these awards." Is it the practice of the Department to require evidence that would preclude descendants from sharing or is it simply a policy decision?

Mr. **Pennington**. No, we do not require evidence that would preclude descendants from sharing. What we do is send out a results of research report to the tribe and to any interested individuals, and we have made value judgments in that report. We then ask for their reaction to it, if they have any solid historic or ethno-historic reason for disputing that report. That is really what Mrs. Elbert was asking for in that letter.

Senator **DeConcini**. I see.

In this letter it is also stated that the size of the descendant group, the 3,243, argues against excluding them from sharing in the funds. Doesn't this argument cut two ways, that the larger the descendant group, the greater the dissipation of the fund?

Mr. **Pennington**. It certainly does, sir.

Senator **DeConcini**. Do you have any idea what this descendant group entails and what it amounts to? Do you know much about them?

Mr. **Pennington**. No, frankly, we don't, other than the fact of their sharing in the previous award and we have data from that award insofar as the descendants are concerned.

Senator **DeConcini**. Does that lead you to any conclusions as to the economic position or stability of that descendant group or is it too diverse?

Mr. **Pennington**. I would think it would be too diverse to lead to any conclusion of the type you suggest.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department on S. 2823, "To provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in Dockets Numbered 59 and 13–E before the Indian Claims Commission and Docket Numbered 13–F before the United States Claims Court, and for other purposes."

We support the concept of S. 2823, we object to the bill as drafted and are offering a substitute for your consideration.

S. 2823 would provide for the distribution of funds appropriated to pay judgments to the Saginaw, Swan Creek and Black River Chippewas in Dockets 59 and 13-E before the Indian Claims Commission and Docket 13-F before the United States Claims Court. The bill would authorize the Secretary of the Interior to transfer these funds to the Saginaw Chippewa Tribe of Michigan in their entirety. The Saginaw Tribal Council would establish a fund known as the "Principal Investment Fund." Tribal programs would be administered from this fund. Upon the transfer of the funds the Secretary would have no further trust responsibility for the investment, supervision, administration, or expenditure of such funds. The sole beneficiary of the judgment funds in these three dockets would be the Saginaw Chippewa Tribe of Michigan. If any portion of the funds were utilized in per capita payments by the Tribe they would not be subject to Federal or State income taxes or be considered as income or resources under the Social Security Act or other financial assistance programs aided by the Federal Government.

BACKGROUND

On June 22, 1973, the Indian Claims Commission awarded $3,479,308.00 in Docket 59 to the Saginaw, Swan Creek and Black River Chippewas as compensation for land in Michigan and Ohio ceded under the Treaty of November 17, 1807, 7 Stat. 105. The necessary funds were appropriated on September 15, 1978.

On August 17, 1978, the Indian Claims Commission awarded $563,624.21 in Docket 13-E to the Saginaw, Swan Creek, and Black River Chippewas as compensation for land in Ohio ceded under the Treaty of July 4, 1805, 7 Stat. 87. The necessary funds were appropriated on January 19, 1979.

On January 19, 1979, the United States Court of Claims awarded $258,820.80 to the Saginaw, Swan Creek and Black River Chippewas in Docket 13-F as compensation for land in Ohio and Michigan ceded under the Treaty of September 29, 1817, 7 Stat. 178. The necessary funds were appropriated on March 2, 1979.

The Saginaw, Swan Creek, and Black River Bands of Chippewa Indians were Michigan Chippewas. A historic analysis of the three groups is found in the Results of Research Report signed October 3, 1983, attached to this report. Briefly, to summarize, by the Treaty of May 9, 1836, 7 Stat. 503, the United States treated separately with the Swan Creek and Black River Chippewa Bands. Under this treaty, the entirety of the two bands was expected to remove west of the Mississippi River, but only a portion actually moved. The following year, by the Treaty of January 14, 1837, 7 Stat. 528, the Saginaw Band agreed to relinquish land in Michigan to the United States in exchange for land outside of Michigan. Later, the Band members declined to leave the State and entered into other treaties involving Michigan lands.

An 1855 treaty provided for the dissolution of the Saginaw Chippewa tribal organization. The group reorganized under the Indian Reorganization Act of 1934 (IRA) as the "Saginaw Chippewa Indian Tribe of Michigan" with a constitution and bylaws approved May 6, 1937. A revised membership roll containing 388 names was approved by the Assistant Secretary on December 30, 1938.

The October 3, 1983, Results of Research Report identified the Saginaw Chippewa Indian Tribe of Michigan as a partial representative of the "Chippewa Nation" of the treaties of 1805, 1807 and 1817, as well as a substantial number of descendants of the treaty group who do not qualify for membership in the IRA tribe, but are equally entitled to participate.

In our Research Report we recommended that the funds be divided between the Saginaw Chippewa Tribe of Michigan and the Saginaw Chippewa descendants on the basis of the numbers in each group as designated on the payment roll, approved January 28, 1977, for the distribution of the Saginaw Chippewa Indians' judgment funds in Indian Claims Commission Docket 57. On that basis, we proposed the judgment be apportioned 891/4134ths (or 21.5530%) to the Saginaw Chippewa descendants. The descendant group would receive their share per capita. The IRA group would be required to develop a tribal proposal for its apportioned share.

The Saginaw Chippewa Tribe of Michigan has objected strongly to sharing these awards with the descendancy group, particularly since their portion is a much smaller percentage of the total than they had expected. A newspaper, The Tribal Observer, of the Saginaw Chippewa Indian Tribe for May 1984 has commented that the Tribe is seeking this special judgment fund distribution legislation because the Bureau of Indian Affairs recommendation on division of the funds "fails to take into account the vital needs of the Tribe and hinders future economic growth of the Tribe * * * * this Tribe has no independent resources other than the remaining three Judgment Fund Dockets."

While we commend the Saginaw Tribe on its willingness to program a large percentage of these funds, we object to S. 2823 because it ignores almost 80 percent of the proposed beneficiaries of these awards as well as removing funds from Secretarial trust responsibility.

We thus object to this proposed legislation on two major grounds: (1) it removes a group of recommended beneficiaries, and (2) the funds would be removed almost immediately from the Secretary's trust responsibilities.

We recommend to the Committee a new substitute bill enclosed for its consideration. The Bureau stands ready to work with the Committee, the Tribe and other interested parties. This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

PROPOSED DEPARTMENTAL AMENDMENT IN THE FORM OF A SUBSTITUTE

Strike all the enacting clause and insert in lieu thereof:

"That, notwithstanding any other law, the funds appropriated September 15, 1978, in Docket 59 before the Indian Claims Commission, on January 19, 1979, in Docket 13-F before the United States Court of Claims, to satisfy awards made to the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided, used and distributed as herein provided.

"SEC. 2. The Secretary of the Interior (hereinafter "the Secretary") shall divide the funds on the basis of the number of enrollees of each group as designated on Saginaw Chippewa Tribe of Michigan roll and the Saginaw Chippewa descendants payment roll, prepared pursuant to the Secretarial plan which became effective November 12, 1977, in terms of 891/4134ths (or 21.5530 per centum) to the Saginaw Chippewa Tribe of Michigan and 3243/4134ths (or 78.4470 per centum) to the Saginaw Chippewa descendant group.

"SEC. 3. For the purposes of distributing the share of the Saginaw Chippewa descendant group, the Secretary shall bring current to the date of this Act the descendant payment roll approved January 28, 1983, prepared pursuant to the Secretarial plan of November 12, 1977: (i) by adding the names of persons living on the date of this Act who would have been eligible for enrollment under the 1977 plan, but who were not enrolled; (ii) by adding the names of children born on or prior to and living on the date of this Act to persons who were eligible for enrollment, regardless of whether such parents are living or deceased on the date of this Act and children born to enrollees on or prior to and who are living on the date of this Act; and (iii) by deleting the names of enrollees who are deceased as of the date of this Act and the names of those persons who are enrolled as members of the Saginaw Chippewa Tribe of Michigan.

"SEC. 4. The share of the Saginaw Chippewa descendants shall be distributed per capita by the Secretary, in sums as equal as possible, to all persons listed on the Secretary's descendant payment roll. The Secretary shall publish notice of the roll preparations and the deadline for filing applications in the Federal Register and in other appropriated local media. Such applications shall be filed with the Secretary within 180 days from the date of this Act. Appeal shall be handled in accordance with procedures established by the Secretary.

"SEC. 5. The share of the Saginaw Chippewa Indian Tribe of Michigan shall be used and distributed as herein provided:

> "A. The Secretary shall invest the funds and such funds shall be utilized by the tribal governing body, on an annual budgetary basis, subject to the approval of the Secretary for tribal programs as set out in a plan approved by the tribe on February 7, 1983, and by Resolution JA-01-84, these programs being, but not limited to, health needs, elderly assistance, business development and investment, tribal education, legal services, juvenile home, land acquisition, improvement of tribal administration, recreational equipment, and burial and cemetery upkeep.

"The tribe may utilize a portion of the funds in an investment designed to yield periodic dividend payment.

"SEC. 6. Any per capita shares of living, competent adults shall be paid directly to them. Any per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with regulations prescribed by the Secretary. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1983 (87 Stat. 466), as amended (96 Stat. 2512; 25 U.S.C. 1403).

SEC. 8. None of the funds distributed per capita or made available under this Act for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs."

Senator DECONCINI. I would like at this time to include in the record a copy of a letter to Congressman Vander Jagt from Mrs. Hazel Elbert of the Bureau of Indian Affairs, dated June 6, 1984.

[Letter to Mr. Vander Jagt follows:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, DC, June 6, 1984.

Hon. GUY VANDER JAGT,
House of Representatives, Washington, DC.

DEAR MR. VANDER JAGT: Thank you for your letter of May 17, 1984, requesting information in regard to a request for help to your office from Arnold J. Sowmick, Sr., Tribal Chairman, The Saginaw Chippewa Indian Tribe. Mr. Sowmick does not agree with the research report of the Bureau of Indian Affairs and suggested proposed legislation concerning awards in Indian Judgment Fund Dockets 59, 13E, and 13F. Specifically, you need to know whether special legislation is necessary from Congress to carry out the Tribe's wishes or whether the Bureau would re-evaluate its present position and change its proposed distribution plan?

A previous award in Docket 57 resulted in a distribution of the funds between members of The Saginaw Chippewa Indian Tribe and a group of descendants who qualified to share in the award by tracing their lineal ancestry to certain specified rolls. The result was that 3,243 descendants share in the award and only 891 enrolled members of the Tribe. In addition, some 20 percent of the tribal share was retained for tribal purposes as required under the 1973 Indian Judgment Fund Distribution Act. The Bureau has proposed that the same distribution formula be utilized in distributing the funds in Docket 59, 13E, and 13F.

Mr. Sowmick has proposed that the descendant group be ruled out of the awards and that The Saginaw Chippewa Indian Tribe be awarded the full awards in each of the three dockets and that the funds be used to establish a "self-sustaining, perpetual and constantly increasing investment and economic development fund." He adds that the Tribe has no independent resources and that the Bureau's proposal "fails to take into account the vital needs of the Tribe and hinders future economic growth of the Tribe." Enclosed are copies of the Bureau's Results of Research Report on these three dockets signed October 3, 1983, and a proposed Secretarial plan for the distribution of the funds signed September 6, 1983. While we understand the desire of the Tribe to be granted 100 percent of these awards and certainly have no objection to the Tribe programing their entire share, we have seen no evidence that would preclude the descendants from sharing in these awards.

In addition to the information presented in the Results of Research Report, which we will not attempt to repeat here, may we emphasize that the wrongs being compensated for in these awards date from 1805, 1807, and 1817 respectively. The previous award in Docket 57 was an 1819 taking date. The very size of the descendant group argues against excluding them from sharing in a monetary compensation for wrongs done their common ancestors.

January 12, 1983, Congress amended the Indian Judgment Fund Act of October 19, 1973, by extending to one year the time the Secretary of the Interior had to present a plan to the Congress for the use and distribution of judgment funds. Sec. 2. (d) requires that if two or more beneficiary entities share in an award the Secretary must "obtain the consent of the tribal governments involved to the proposed provision." If he fails he must submit proposed legislation to the Congress. It is obvious from Chairman Sowmick's letter that the Tribe is unwilling to agree to the inclusion of the descendant group on these awards. We will, therefore, be required to submit proposed legislation to the Congress where the Tribe will have the opportunity of presenting their views at scheduled hearings. The Tribe may also arrange to have proposed legislation introduced on their behalf and the Secretary would have the opportunity of presenting the Department's views before the Congress. In either event the Tribe will have an opportunity to present their case to the Congress.

We are sorry that this response could not be more favorable to Chairman Sowmick's position. If we can furnish you with additional information we shall be happy to do so.

Sincerely,

HAZEL E. ELBERT,
Acting Director, Office of Indian Services.

Senator DECONCINI. Under the case of *Delaware Tribal Business Committee* v. *Weeks*, decided in 1976, it was held that judgment funds are tribal property and are thus subject to congressional determination for distribution. Do you agree that Congress has the authority to limit the use of these funds in the manner provided in the bill before us? Does that give you any problem, Mr. Fritz?

Mr. FRITZ. I have not looked at it from that purpose with respect to this particular bill. I have looked at it with respect to the bill coming up, but not with respect to the Saginaw. I really had not contemplated it. In my perspective, Congress can use its judgment to do what it will. It has primacy pursuant to the Constitution, so I suppose that in its wisdom, it could act in any fashion it would so choose.

Senator DECONCINI. Thank you. I have no further questions. Does staff have any questions?

Mr. ALEXANDER. No, thank you, Mr. Chairman.

Senator DECONCINI. Thank you very much, Mr. Fritz.

Next, we will hear from Mr. Arnold Sowmick, chairman of the Saginaw Chippewa Tribe, accompanied by Ruth Moses, Ben Quigno, and Kim Sowmick, tribal council members. Also with him today is Karl Funke, attorney for the tribe.

Mr. Chairman, you may proceed. Your full statement will appear in the record if you would like to summarize it.

STATEMENT OF ARNOLD SOWMICK, CHAIRMAN, SAGINAW CHIPPEWA TRIBE OF MICHIGAN, ACCOMPANIED BY RUTH MOSES, TRIBAL CHAIRPERSON; BEN QUIGNO, TRIBAL PLANNER; KIM SOWMICK, TRIBAL MEMBER; AND KARL FUNKE, ATTORNEY FOR THE SAGINAW CHIPPEWA TRIBE

Mr. SOWMICK. Thank you.

Mr. Chairman and distinguished members of the committee, I am pleased to present our views concerning S. 2823.

On May 6, 1937, the constitution and by-laws of the Saginaw Chippewa Tribe of Michigan were approved under the Indian Reorganization Act of 1934. Our tribe is located on two reservations, with the largest reservation being located in Isabella County, containing 450 acres of tribal trust lands and 21 allotments of land, around 800 acres. Our jurisdiction and reservation boundaries extend to six townships in Isabella County. The other reservation is known as the Saganing Reservation, which contains 70 acres of tribal trust land located in Arenac County.

Our tribe traces its origins to the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians who inhabitated the southern half of the lower peninsula of Michigan and north central Ohio during the 18th century.

Between the years 1785 and 1864, the Saginaw, Swan Creek, and Black River Bands entered into 14 separate treaties with the United States. Lands ceded by the bands between 1805 and 1819 pursuant to the four treaties which form the basis for the awards in dockets 57, 59, 13–E, and 13–F totaled more than 11,462,122 acres. At the time of the four treaty cessions, the tribe received a high of 6 cents per acre to a low of one-fifth of a cent per acre for land then valued between $1.06 and $1.10 per acre. The tribe currently has only 520 acres of tribal trust land and about 800 acres of allotted trust land.

Our legislation seeks to distribute funds representing awards for land taken under three treaties. The bill provides that the tribe be allowed to create a perpetual trust with funds awarded in the respective dockets. These dockets were awarded to the tribe in the following manner:

On June 22, 1978, the Indian Claims Commission, in docket 59, awarded the Saginaw Chippewa Tribe $3,479,308. This award represents compensation for 3,298,637 acres of lands ceded by the bands under the treaty of November 17, 1807.

On August 17, 1978, the Indian Claims Commission, in docket 13–E, awarded James Strong, former chief, as representative on behalf of all members by blood of the Chippewa Tribe of Indians, $563,224.21 as compensation for 517,961, acres of land ceded by the bands.

On January 19, 1979, the U.S. Court of Claims, in docket 13–F, awarded $258,820.80 in another action which was compensation for 228,174 acres of land ceded under the treaty of September 29, 1817.

In January and February of 1983, funds totaling $16,786,624.09 were distributed from docket 57. This money was distributed pursuant to a Bureau of Indian Affairs plan developed in 1976 and 1977. The plan, which became effective on November 12, 1977, was paid as follows:

Of the total $13,168,617.12 or 79 percent was paid out in per capita payments of $4,060 to 3,243 descendants who were not members of the tribe;

Of the total, $2,794,420 or 17 percent was paid out in per capita shares of $3,248.50 to all enrolled members of the tribe;

Of the total $723,605 or 4 percent was retained for tribal programs.

It should also be noted that the descendants' share of docket 57 represents 54 percent of the total of all four dockets as of July 1984.

The tribe would like to include the remaining moneys from docket 57 in this legislation as an amendment.

The very small acreage which the tribe currently retains has no mineral or other natural resources. It is not forested and has minimal agricultural or development potential due to a high water table in that portion of the reservation. The best land is owned by non-Indians, the city of Mount Pleasant, and the State of Michigan.

There is no industry or business on the tribal lands, and the unemployment of tribal members exceeds 60 percent. The funds awarded through various judgments are our only real resource. If these funds are again distributed per capita, our economic potential will be severely diminished.

Therefore, with this knowledge, we have proposed the bill that is now before you. With the income derived from the investment fund, the tribe could develop programs for its people. Further information as to how each of these needs will be provided for will be outlined in the testimony of vice-chairperson Ruth Moses.

In an effort to address other historical issues, we have been working over the course of the past year and a half on revisions to our Tribal Constitution of 1937. Among other provisions of the current constitution which is undergoing revision, the provision defining who is eligible for membership in the tribe is being revised. The current constitution provides that only children who are at least one-fourth Indian blood and whose parents are residents of the reservation at the time of the birth of the child are eligible for membership. Our proposed revision eliminates the reservation residency requirement and opens membership to any person who is at least one-fourth Saginaw Chippewa blood.

Upon adoption of the revised constitution, many of the nonmember descendants would become eligible for membership in the Saginaw Chippewa Tribe and thus eligible to participate in the benefits to be derived from the investment income of the Principal Investment Fund proposed in this legislation.

I want to reemphasize the fact that this is all the money left of the land claims settlements. On April 1 of this year, the tribe sponsored a public hearing to solicit input from tribal members and descendants concerning the tribe's proposed plan to establish a Principal Investment Fund rather than make per capita payments. At this hearing, several tribal employees addressed the historical, legal, social, and economic issues leading to the tribe's decision.

Additionally, various representatives from other tribes in the West were invited and made presentations at the hearing. The representatives were Thomas Vigil, Jicarilla Apache Tribe of New Mexico; Ramona Howe, Crowe Tribe of Montana; Austin Gillette, Fort Berthold Reservation of North Dakota; and Charles "Chuck" Jacobs, Pine Ridge Reservation of South Dakota. Each of these individuals addressed the negative impacts that resulted when their respective tribes made per capita payments to their members. Contrastingly, they all emphasized the long-term positive impacts which enured to their tribes when subsequent awards were used for investment. All of them encouraged the tribe to use their judgment funds for investment rather than dissipate the funds through per capita payments.

We respectfully request that you allow us to preserve this money for our future by supporting our legislation. To do so will be to provide a better and brighter future for our children, which our ancestors were unable to do in 1805, 1807, and 1817. To per capita these funds would be tantamount to making the same errors that were made in treaty times which ended with our ancestors having nothing.

In closing, I would like to inform this committee that we are intending to receive assistance through a Charles Steward Mott Foundation grant to develop the investment plan for the fund that would be created by this legislation. The grant is providing us with expert assistance to review the alternatives available for investment of the principal balance of our funds. At heart here is the preservation of our way of life and our only hope for development of our social and economic self-sufficiency.

What we are seeking through this legislation is only consistent with the stated Federal policy of this Congress as stated in the amendments to the Indian Judgment Fund Distribution Act enacted just last year. We only ask that you follow that policy here today.

Our future rests in your hands. Will it be a future of sustained prosperity, health, education, and productivity or one of short-term gain and continuing poverty, suffering, illiteracy, and dependency?

The United States Government is our trustee. We ask each member of this committee to act as our trustee and weigh objectively what action a trustee should take in regard to S. 2823. Thank you for your time and your careful consideration of this most critically important matter.

For the record, I would like to submit a resolution of support from the Sault Ste. Marie Tribe and the Bay Mills Indian community. We are advised that the Keweenaw Bay Indian community will be submitting a resolution of support later.

Thank you.

[The prepared statement and resolution follow:]

The Saginaw Chippewa Indian Tribe
7070 EAST BROADWAY MT. PLEASANT, MICHIGAN 48858 (517) 772 - 5700

STATEMENT OF ARNOLD J. SOWMICK, SR., TRIBAL CHAIRMAN - SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 2823, A BILL "TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS APPROPRIATED IN SATISFACTION OF JUDGMENTS NUMBERED 59 AND 13E BEFORE THE INDIAN CLAIMS COMMISSION AND DOCKET NUMBERED 13F BEFORE THE UNITED STATES CLAIMS COURT, AND FOR OTHER PURPOSES".

August 6, 1984

Mr. Chairman and distinguished members of the Committee, I am pleased to present our views concerning the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

On May 6, 1937, the Constitution and By-Laws of the Saginaw Chippewa Indian Tribe of Michigan were approved under the Indian Reorganization Act of 1934. Our Tribe is located on two reservations, with the largest reservation being located in Isabella County, containing approximately 450 acres of Tribal Trust lands and twenty-one allotments of around 800 acres. Our jurisdiction and reservation boundaries extend to six townships in Isabella County. The other reservation is known as the Saganing Reservation, which contains

70.065 acres of Tribal Trust land located in Arenac County, Michigan.

Our Tribe traces its origins to the Saginaw, Swan Creek and Black River Bands of Chippewa Indians who inhabited the southern half of the lower peninsula of Michigan and North Central Ohio during the 18th century. As the United States slowly began to take over the Michigan Territory, the Saginaw, Swan Creek and Black River Bands began to diminish.

Between the years 1785 and 1864 the Saginaw, Swan Creek and Black River Bands entered into fourteen separate treaties with the United States. The land ceded by the Saginaw, Swan Creek and Black River Bands of Chippewa between 1805 and 1819 pursuant to the four treaties which form the basis for the awards in Dockets 57, 59, 13E and 13F totaled more than 11,462,122 acres. Millions of additional acres were ceded in the other 10 treaties between the Bands and the United States. At the time of the four treaty cessions, the Tribe received a high of $.06 an acre to a low of 1/5 of a cent an acre for land then valued at between $1.06 to $1.10 an acre. The Tribe currently has only 520 acres of tribal trust land and about 800 acres of allotted trust land.

Beneath the lands ceded by the Bands, hundreds of millions of dollars of gas and oil have been recovered for which the Tribe has received no compensation.

Our proposed legislation seeks to distribute funds representing awards for land taken under three treaties. The Bill provides that the Tribe be allowed to create a perpetual trust with the funds awarded in Indian Claims Commission Dockets 59 and 13E, and Court of Claims Docket 13F.

These Dockets were awarded to the Tribe in the following manner:

1. On June 22, 1978 the Indian Claims Commission in Docket 59 awarded the Saginaw Chippewa Tribe $3,479,308. This award represents compensation for 3,298,637 acres of lands ceded by the Saginaw, Swan Creek and Black River Bands under the Treaty of November 17, 1807. Congress appropriated funds for this docket on September 15, 1978.
2. On August 17, 1978, the Indian Claims Commission in Docket 13E awarded James Strong (former Chief), as representative on behalf of all members by blood of the Chippewa Tribe of Indians, $563,624.21, as compensation for 517,961.4 acres of land ceded by the Saginaw, Swan Creek and Black River Bands under the Treaty of July 4, 1805. Congress appropriated funds for this Docket on January 19, 1979.
3. On January 19, 1979, the United States Court of Claims in Docket 13F awarded $258,820.80 in another action brought by former Chief James Strong on behalf of blood members. This award was compensation for 228,174 acres of land ceded under the Treaty of September 29, 1817. The funds were appropriated by Congress on March 2, 1974.

In January and February of 1983 funds, totaling $16,786,642.09 were distributed from Docket 57 of Indian Claims Commission Judgment Funds. This $16,786,642.09 was distributed pursuant to a Bureau of

Indian Affairs plan developed in 1976 and 1977. The plan, which became effective on November 12, 1977 was paid as follows:

1. $13,168,617.12 or 79% of the total was paid out in per capita payments of $4,060 to 3,243 descendants who were not members of the Tribe.
2. $2,794,420 or 17% of the total was paid out in per capita shares of $3,248.50 to all enrolled members of the Tribe.
3. $723,605 or 4% of the total was retained for Tribal programs.

It should be noted that the 4% held out for Tribal programs was 20% of each member's share, no money was held out from the descendants. It should also be noted that the descendants share of Docket 57 represents 54% of the total of all four dockets as of July, 1984.

The Tribe will soon be expending $60,000 for 60 acres of land within the Isabella Reservation. With the exception of this land purchase, the Tribe would like to include the remaining monies from Docket 57 in this legislation.

In the forty-seven years since we adopted a Tribal Constitution, we have come a long way, but we have always been limited because of our lack of resources.

The very small amount of acreage which the Tribe currently retains has no mineral or other natural resources, it is not forested and has minimal agricultural or development potential due to a high water table in that portion of the reservation. The best lands are owned by non-Indians, the city of Mount Pleasant and the State of Michigan.

There is no industry or business on the tribal lands and unemployment of tribal members exceeds 60 percent. The funds awarded through the various judgments are our only real resource. If these funds are again distributed per-capita, our economic potential will be severely diminished.

Therefore, with this knowledge, we have proposed the bill that is now before you. Our Bill as proposed would provide:

1. A principal investment fund for economic development purposes.
2. It provides for reinvestment of at least 10% of the annual income for ten years.
3. It provides for accounting safeguards to protect the Fund.
4. It would be a plan consistent with the self-determination policy, because it would enable us to have the responsibility of providing for our own people.

With the income derived from the investment fund, the Tribe could develop programs for its people. Our plan for use of the income would be for the following programs:

1. Health Insurance Program;
2. Assistance to the Elderly;
3. Business Development and Investment;
4. Tribal Education;
5. Tribal Legal Services;
6. A Juvenile Home;
7. Land Acquisition;
8. Improvement of Tribal Administration;
9. Recreational Equipment; and
10. Burial and Cemetery Upkeep.

All of these purposes were arrived at through a survey of our Tribal community. Further information as to how each of these needs will be provided for, will be outlined in the testimony of the Vice-Chairperson, Ruth Moses.

The whole idea, as we visualize it, is to reduce our dependence on federal government programs, which are continually decreasing each year and increase employment and business development. Whereas, the idea of providing per-capita payments of $1,200 to $1,600 would only serve to dissipate the funds, only leading to more dependence by the Tribe on federal programs.

In an effort to address other historical issues, we have been working over the course of the past year and a half on revisions to our Tribal Constitution of 1937. Among other provisions of the current Constitution which are undergoing revision, the provision defining who is eligible for membership in the Tribe is being revised. The current Constitution provides that only children who are at least one-fourth Indian blood and whose parents are residents of the reservation at the time of the birth of the child are eligible for membership. Our proposed revision eliminates the reservation residency requirement and opens membership to any person who is at least one-fourth Saginaw Chippewa blood.

Upon adoption of the revised constitution, many of the non-members descendants would become eligible for membership in the Saginaw Chippewa Tribe and thus eligible to participate in the benefits to be derived from the investment income of the Principal Investment Fund proposed in this legislation.

I want to reemphasize the fact that this is all the money left from our land claims settlements. To dissipate the remaining assets through per capita distribution has no economic or historical justification. Without the existence of a tribal entity there would have been no funds.

On April 1st of this year, the Tribe sponsored a public hearing to solicit input from the tribal members and descendants concerning the Tribe's proposed plan to establish a Principal Investment Fund rather than make per capita payments. At this hearing, several tribal employees addressed the historical, legal, social and economic issues leading to the Tribe's decision.

Additionally, various representatives from other tribes in the west were invited and made presentations at the hearing. The representatives were: Thomas Vigil, Jicarilla Apache Tribe of New Mexico; Ramona Howe, Crowe Tribe of Montana; Austin Gillette, Fort Berthold Reservation of North Dakota; and Charles "Chuck" Jacobs, Pine Ridge Reservation of South Dakota. Each of these individuals addressed the negative impacts that resulted when their respective tribes made per capita payments to their members. Contrastingly, they all emphasized the long-term positive impacts which enured to their tribes when subsequent awards were used for investment. All of them encouraged the Saginaw Chippewa Tribe to use their judgment funds for investment rather than dissipate the funds through per capita payments.

We respectfully request that you allow us to preserve this money for our future by supporting our legislation. To do so will be to provide a better and brighter future for our children, which our ancestors were unable to do in 1805, 1807 and 1817. To per capita these funds would be tantamount to making the same errors that were made in Treaty times, which ended up with our ancestors having nothing.

In closing, I would like to inform this Committee that we are intending to receive assistance through a Charles Stewart Mott Foundation Grant, to develop the investment plan for the fund that would be created by this legislation. The Grant is providing us with expert assistance to review the alternative available for investment of the principal balance of our funds. We believe that our idea as illustrated in this legislation should be encouraged by the government. At heart here is the preservation of our way of life and our only hope for development of our social and economic self-sufficiency.

What we are seeking through this legislation is only consistent with the stated federal policy of this Congress as stated in the Amendments to the Indian Judgment Fund Distribution Act enacted just last year. We only ask that you follow that policy here today.

Our future rests in your hands. Will it be a future of sustained prosperity, health, education and productivity or one of short-term gain and continuing poverty, suffering, illiteracy and dependency?

The United States Government is our trustee. We ask each member of this Committee to act as our trustee and weigh objectively what action a trustee should take with regard to S. 2823. Thank you for your time and careful consideration of this most critically important matter.

THE SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS
206 GREENOUGH STREET
SAULT STE. MARIE, MICHIGAN
49783

BUSINESS
RESOLUTION 7-24-84

SUPPORT FOR SENATE BILL 2823 and
HOUSE OF REPRESENTATIVES BILL 5960

WHEREAS, the Sault Ste. Marie Tribe of Chippewa Indians, is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935 (48 Stat. 378); and

WHEREAS, the Sault Ste. Marie Tribe of Chippewa Indians believes in the self-sufficiency of Indian Tribes; and

WHEREAS, the Saginaw Chippewa Indian Tribe seeks to develop its Tribal economy on a long range basis thru perpetual trust; and

WHEREAS, the Sault Ste. Marie Tribe of Chippewa Indians has always endorsed such efforts.

THEREFORE, BE IT RESOLVED, that the Sault Ste. Marie Tribe of Chippewa Indians goes on record in support of Senate Bill 2823 and House of Representatives Bill 5960.

CERTIFICATION

We, the undersigned, as Chairman and Secretary of the Sault Ste. Marie Tribe of Chippewa Indians, hereby certify that the Board of Directors is composed of 13 members, of whom 10 members, constituting a quorum, were present at a meeting thereof duly called, noticed, convened and held on the 24th day of July, 1984; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of 9 members for, and 0 against, 1 abstaining; and that said resolution has not been rescinded or amended in any way.

Joseph K. Lumsden, Chairman
Sault Ste. Marie Tribe
of Chippewa Indians

Barbara Pine
Barbara Pine, Secretary
Sault Ste. Marie Tribe
of Chippewa Indians

AUG - 2 198

RESOLUTION

Resolution No. 84-8-1

WHEREAS: The Bay Mills Indian Community is a duly recognized Indian Reservation under the Indian Reorganization Act of June 18, 1934, '48 stat. 984,' as amended by the Act of June 15, 1935,'49 stat. 378,' and

WHEREAS: The Saginaw Chippewa Indian Tribe of Michigan proposed through Resolution JA-01-84 a plan for distribution of Indian Claims Commission Dockets 59 and 13E, and Court of Claims Docket 13F, and

WHEREAS: Legislation has been drafted and submitted to Congress in Senate Bill 2823 and House of Representatives Bill 5960, and

WHEREAS: The Bay Mills Tribe believes that the efforts of the Saginaw Chippewa Tribe to develop a perpetual Trust Fund for their Claim moneys is in the true spirit of Indian self-determination,

AND NOW THEREFORE BE IT RESOLVED THAT, the Bay Mills Indian Community, Tribal Council supports the efforts and the intent of the Saginaw Chippewa Indian Tribe of Michigan as reflected in Senate Bill 2823 and House of Representatives Bill 5960.

APPROVED:

Wade I. Teep

Wade I. Teeple, Tribal Chairman
Bay Mills Indian Community
Executive Council

ATTEST:

Corrine A. Cameron

Corrine A. Cameron, Tribal Secretary
Bay Mills Indian Community
Executive Council

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community, Executive Council, do hereby certify that the above resolution was adopted and approved at a meeting of the Bay Mills Executive Council held in Bay Mills Michigan on the 1st day of August, 1984, with a vote of 3 for 0 opposed 1 abstaining and 1 absent. As per provisions of the Bay Mills Constitution the Tribal Chairman must abstain except in the event of a tie.

Corrine A. Cameron

Corrine A. Cameron, Tribal Secretary
Bay Mills Indian Community
Executive Council

Senator **DeConcini.** Thank you, Mr. Chairman.

I understand that Mr. Funke has a statement also?

Mr. **Sowmick.** Yes; and the vice chairperson, Ruth Moses.

Senator **DeConcini.** You have a statement also?

Miss **Moses.** Yes.

Senator **DeConcini.** I would ask that you summarize that statement so we can proceed with this. We will put the full statement in the record for you and Mr. Funke.

STATEMENT OF RUTH MOSES, VICE CHAIRPERSON OF THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN

Miss **Moses.** Mr. Chairman and honorable members of the committee, thank you for allowing me the time to outline how the income from the proposed principal investment fund will address the needs of our people.

In addition to serving on the tribal council as sub-chief, I am also employed by the tribe as executive secretary. I have been working for the tribe for over 10 years, and I am the youngest of nine children and have lived on the Isabella Reservation all my life. As the youngest member of our tribal council, it might be said that I represent the new generation of leadership for our tribe. Our future is greatly dependent on whether you endorse our proposal to invest these judgment funds, our last resource.

Last year, our tribal government conducted a survey among the tribal community to obtain the following 10 objectives. Within each category, I will give a brief explanation of the need and how those needs will be addressed.

The first priority is the provision for membership health insurance. This will provide full health coverage for all tribal members and their families. Many of our people do not have adequate health coverage and many are in need of specialized health care. This membership health insurance program is not intended to duplicate existing services but to supplement programs that are inadequate and to ensure that those who fall through the so-called safety net will be covered by our own.

Our second priority is the development of an elderly assistance program. Most of our elders have been subjected to poverty conditions all their lives. The few elders that remain among us are the link to our past and our respect for them cannot be defined. Our priorities for the elderly assistance program will be to provide specialized health care otherwise unavailable, particularly in-home health care; access to decent and safe housing; and access to transportation services.

Our third priority is business development and investment. By this we mean investment at the local level. The first part will involve the use of our financial resources to leverage the creation of tribal enterprises and joint ventures. The second part will involve the establishment of a community development credit union. The function of the credit union will be to provide the following: business development loans to individual tribal members to start their own businesses on the reservation; downpayment loans for tribal members to buy or build their own homes; and loan opportunities for such purposes as buying automobiles, appliances, and so on.

The credit union will operate along the lines of a revolving loan concept, thereby creating a multiplier effect within the tribal economy. It has been well documented that tribal people do not have equal access to business development loans, housing loans, and mortgages because of the trust status of tribal land. Financial institutions are readily justified and excused for redlining the reservation.

Our fourth priority concerns tribal education. For the last 50 years, our people have been victims to the alienating experiences of the local public school system. The consequences of those experiences have resulted in a dropout rate of 75 percent. This has had a devastating effect on the potential of our people. No one from our tribal community has ever completed a 4-year college education. Only a few have completed as much as 2 years of college in spite of the fact that a State university is only three miles from our community.

This priroity will focus on two objectives: providing higher education and apprenticeship training scholarships for tribal members, and providing funding for the development of tribally-controlled education programs for our children, from preschool through adult education.

We believe that the foundation of economic development is based on the education of our people.

Our fifth priority involves the provision of legal services. If our ancestors had the opportunity to legal assistance back during the allotment days, maybe our tribe would not have lost 99 percent of our land to fraudulent dealings with Indian agents of the BIA, land speculators, and lumber barons. The purpose of this objective will be to employ free legal services for our members.

Our sixth priority concerns the establishment of a juvenile home. This year, the Indian child welfare program had to absorb a 38-percent cut in appropriations. The intent of this objective is to establish a juvenile home with staff to provide a cultural web of security, counseling, and care for these powerless children until they can be placed in Indian foster homes or adopted by Indian families.

Our next priority involves land acquisition. The tribal land base where our community is located is only 450 acres, certainly one of the smallest in Indian country, but the reservation boundaries extend over six townships in Isabella County, 138,000 acres or 212 square miles. Our community is experiencing strong growth pressures. Housing is overcrowded, with two or three families per household. We also need land for economic development, as well as cultural, recreational, and tourism development. Our three priorities for land acquisition are housing, economic development, and recreation.

Our next priority involves improvement of tribal administration. The ninth priority is recreation programming and equipment. We have an EDA-funded, 63-unit campground on the reservation, but we do not have the means to employ the staff to maintain the facility. Our final priority involves a burial and cemetery upkeep program. Our people are buried in various cemeteries throughout the county. We should have our own. Second, members' savings are taken by the expense of funeral costs. This program would provide for those costs for our members as well as a special bereavement fund which would be offered to help the families affected.

When I first started working for the tribe back in 1972, our tribal administration consisted of only four people including myself. We worked out of a two-room house that had no electricity, no insulation, no running water, and an outhouse. Today, we operate out of a modern, 28,000-square foot community center that includes a police and fire department, a health clinic, a substance abuse counseling program, child welfare services, a tribal court system, education programs, bingo, as well as our central administration. At the very least, we have learned how to believe in ourselves, and in the possibility that we can again become the self-reliant nation we once were. We stand at the threshold, awaiting your decision.

Thank you.

[The prepared statement follows:]

The Saginaw Chippewa Indian Tribe

7070 EAST BROADWAY MT PLEASANT, MICHIGAN 48858 (517) 772-5700

STATEMENT OF RUTH MOSES, TRIBAL SUB-CHIEF - SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, S. 2823, A BILL "TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS APPROPRIATED IN SATISFACTION OF JUDGMENTS AWARDED TO THE SAGINAW CHIPPEWA INDIAN TRIBE IN DOCKETS NUMBERED 59 AND 13E BEFORE THE INDIAN CLAIMS COMMISSION AND DOCKET NUMBERED 13F BEFORE THE UNITED STATES CLAIMS COURT AND FOR OTHER PURPOSES".

August 6, 1984

Mr. Chairman and honorable members of the committee, thank you for allowing me the time to outline how the proposed "Principal Investment Fund" will address the needs of our people, and will enable the Saginaw Chippewa Tribe to become the self-reliant nation we once were.

In addition to serving on the Tribal Council as Sub-Chief, I am also employed by the tribe as Executive Secretary. I have been working for the Tribe for over ten years. I am the youngest of eight children and have lived on the Isabella Reservation all of my life. As the youngest member of our Tribal Council, it might be said that I represent the new generation of leadership for our Tribe. But we may be a generation without a future. Our future is greatly dependent on whether you endorse our proposal to invest these judgment funds, our last resource.

Last year our tribal government conducted a survey among the tribal community to obtain input on how the income generated from the proposed investment program should be used, and in what priority. The following ten objectives are the results of that survey. Within each category I will give a brief explanation of the need, and how those needs will be addressed.

1. The first priority of the Tribe is the provision for Membership Health Insurance. This program will provide full health coverage to all tribal members and their families. With a fifty to sixty percent unemployment rate on the reservation, many of our people do not have adequate health coverage. And many are in need of specialized health care that are not covered under existing health programs or social services. This membership health insurance program is not intended to duplicate existing available services, but to supplement programs that are inadequate, and to insure that those who fall through the so-called "safety net" will be covered by our own.

2. Our second priority is the development of an Elderly Assistance Program. Most of our elders have been subjected to poverty conditions all their lives, and now we may have the capacity to insure that their remaining years will be properly cared for. The few elders that remain among us are the link to our past, and our respect for them cannot be defined. It is they who often have the greatest need for specialized health care and decent housing. These very basic and essential needs should not be denied them.

   To give you an example, we have an eighty-year-old woman who lives alone on an isolated rural allotment. For years she has lived in a shack with no water or bathroom facilities. Winter and summer, day and night, she has had to haul water from a well outside her home. Through the B.I.A. home improvement program, our former Indian Action Team was able to construct a new home on her land. But the program guidelines would not allow for the installation of a well, plumbing, or a septic system. That was the responsibility of the Indian Health Service. So for several more years she had to continue to haul water to her new home.

   It is these kinds of gaps in services that could be offered to our elders. Our priorities for the elderly assistance program will be to provide specialized health care otherwise unavailable, particularly in-home health care; access to decent and safe housing; and access to transportation services.

3. Our third priority is identified as Business Development and Investment. By this we mean investment at the local level. This will be a two-part objective. The first part will involve the use of our financial resources to leverage the creation of tribal enterprises and joint-ventures. The second part will involve the establishment of a community development credit union. The function of the credit union will be to provide the following opportunities:

   a. Business development loans to individual tribal members, enabling them to start their own businesses on the reservation.

   b. Down payment loans for tribal members as a means of leveraging other sources of financing to buy or build their own homes.

   c. Loan opportunities consistent with the practices of other credit unions for such purposes as buying automobiles, appliances, and so on.

   The credit union would operate along the lines of a revolving loan concept, thereby creating a multiplier effect within the tribal economy. It has been well documented that tribal people do not have equal access to business development loans, housing loans and mortgages because of the trust status of tribal land. Financial institutions are readily justified and excused for "redlining" the reservation. Providing a revolving loan fund through the mechanism of a community-based credit union is a way we can compensate for the unresolved issues and inequities associated with the trust status of our lands. It is also a way we can begin to counteract the social and institutional prejudices that have held our people down for too long.

4. Our fourth priority concerns Tribal Education. For the last fifty years our people have been victims to the alienating experiences of the local public school system. The consequences of those experiences have resulted in a drop-out rate of seventy-five (75) percent. This has had a devastating effect on the potential of our people. And it has gotten worse in recent years. No one from our tribal community has ever completed a four-year college education. Only a few have completed as much as two years of college, in spite of the fact that a state university is only three miles from our community. Therefore this priority will focus on two objectives:

    1) Providing higher education and apprenticeship training scholarships for tribal members, and

    2) Providing funding for the development of Tribally-controlled education programs for our children, from Pre-School through Adult Education.

    The historical drop-out rate and resulting conditions of unemployment and poverty are unacceptable for us to allow to continue.

    We believe that the foundation of economic development is based on the education of our people. We realize that if any lasting change for the better is to be made, it is the tribe that will have to institute that change. And our proposed "Principal Investment Fund" will enable us to direct our resources towards resolving our educational needs.

5. Our fifth priority involves the provision of Legal Services. Federal budget cuts with the legal services corporation, of which the Michigan Indian Legal Services was subject, as well as cuts affecting our B.I.A.-funded judicial services program, have left our tribal members without adequate access to legal consultation and representation. If our ancestors had the opportunity to legal assistance back during the allotment days, maybe our Tribe would not have lost 99 percent of our land due to fraudulent dealings with Indian agents of the B.I.A., land speculators and lumber barons. The purpose of this objective will be to employ free legal services for our members.

6. Our sixth priority concerns the establishment of a Juvenile Home. This year the Indian child welfare program administered by the Minneapolis Area Office of the B.I.A. had to absorb a 38 percent cut in appropriations.

There are 26 tribes among Minnesota, Wisconsin, and Michigan, but the fewest and smallest tribes are in Michigan. Consequently the six Michigan Tribes tend to be the least consulted and the last served. In Fiscal Year 1983 , the Michigan tribes comprised only 26 percent of the Indian child welfare budget, but this year we are expected to absorb 54 percent of the cut.

Because of our smallness and distance from Minneapolis, these kinds of unfair practices have tended to be the norm. Meanwhile, there are very serious issues and needs concerning the welfare of our children, particularly those that are runaways, orphans, or victims of broken homes. The intent of this objective is establish a juvenile home with staff to provide a cultural web of security, counseling, and care for these powerless children, until they can be placed in Indian foster homes or adopted by Indian families.

7. Our next priority involves Land Acquisition. The tribal land base where our community is located is only 450 acres, certainly one of the smallest in Indian country. Half of the land is leased for agricultural use. The rest is either already developed with housing or community facilities, or cannot be developed because of a high water table. But the reservation boundaries extend over six townships in Isabella County, 138,000 acres, 212 square miles. There is an abundance of good land to be acquired, if we only had the means. Our community is experiencing strong growth pressures. The housing is overcrowded, with two or three families per household. We also need land for economic development, as well as cultural, recreational, and tourism development. We are located within three hours of all the major urban centers in Michigan. When those six million people go north to vacation, they pass right through our reservation on a major highway. There is incredible potential for us to be a part of Michigan's tourism industry, if we only had more land. Our three priorities for land acquisition are: housing, economic development, and recreation.

8. Our next priority involves improvement of Tribal Administration. As executive secretary for the tribe, I have seen the impact the budget cuts have had, not only on the morale and condition of our people, but also on our ability to manage increasingly complex programs. Declining federal assistance has reduced our tribal administration to a small body of personnel. This reduction in staff has required existing staff to assume multiple roles in the management process. We have had to become more efficient and resourceful. For example, now we have a computer system which has helped us do just that.

   This particular priority somewhat includes many of the others previously mentioned. The objective is: to begin to supplement and improve on our programs and services that are being cut, by replacing the federal dollar with our own dollar, through our proposed "Principal Investment Fund".

9. The ninth priority concerns recreation programming and equipment. We have an EDA-funded, 63 unit public campground on the reservation, but we do not have the means to employ staff to

maintain the facility. We have a small building that is intended to be a youth recreation center, again we do not have the money to employ supervision and provide for equipment and maintenance. Living in isolated rural conditions, it is important that our children have access to recreational facilities, and proper supervision. Without these opportunities, our children resort to destructive activities, including alcohol and drugs. We have to provide better alternatives for them. That is the primary purpose of this objective.

10. The final priority involves a Burial and Cemetary Upkeep Program. The reservation does not have its own cemetary. Our people are buried in various cemetaries throughout the county. We should have our own. Secondly, very few of our people ever have the means to provide a proper burial for their family members. What little savings they may have is taken by the expensive funeral costs today. This program would provide for those costs for our members. As well, a special bereavement fund would be offered to help the families affected.

When I first started working for the tribe back in 1972, our tribal administration consisted of only four people including myself. We worked out of a two room house that had no electricity, no insulation, no running water, and an outhouse. Today we operate out of a modern 28,000 square foot community center that includes a police and fire department, a health clinic, a substance abuse counseling program, child welfare services, a tribal court system, education programs, bingo, as well as our central administration. We have come a long way, but we have a longer way to go, because we are still dependent. We have made mistakes, but we have learned alot, too. At the very least we have learned how to believe in ourselves, and in the possibility that we can again become the self-reliant nation we once were. We stand at the threshold, awaiting your decision. Thank you.

STATEMENT OF KARL FUNKE, ATTORNEY FOR THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN

Mr. FUNKE. Good morning, Senator DeConcini and staff.

I would like to just briefly summarize some of the historical and legal and policy issues involved with this legislation.

All four dockets, including docket 57 which was previously distributed, involved treaties in which all three bands, the Saginaw, Swan Creek, and Black River Bands all were involved. In 1836, the Black River and Swan Creek Tribes made a separate treaty with the United States in which they agreed to give up all their land in Michigan and move to a reservation in Kansas. They subsequently, in 1897, agreed to dissolve their tribal relations in Kansas and distribute the proceeds from the sale of their lands among their members.

Only a small portion of the Swan Creek and Black River Bands actually did remove to Kansas, and the majority remained in Michigan despite the treaty of 1836. In 1855, with a treaty with the Saginaw Band, the members of the Swan Creek and Black River Band that remained behind were adopted into and became members of the Saginaw Chippewa Tribe. Thus, the descendant entity, the majority of the descendant entity of both the Swan Creek and Black River Bands became members of the Saginaw Chippewa Tribe in 1855. There were only 45 members of the descendant bands in Kansas at the time those bands terminated their tribal relationship in 1897.

I would also like to point out that the administration has contended that there is a large number of well defined descendancy groups involved in this legislation. The BIA has submitted 19 proposed judgment fund distribution plans in the 98th Congress. In 16 of the 19 plans, the Bureau does not propose participation by any descendancy groups, and in virtually every one of those dockets, there are large numbers of descendants who could potentially participate in each of those 16 distribution awards.

Three of the 19 awards involve participation of descendancy groups. However, the Bureau treats the manner in which those descendants are going to participate in a much different fashion in those three plans than they do with regard to the Saginaw Chippewa Tribe. The other three plans involve the Potawatomi Indian Nation, in which four federally recognized tribes are going to participate, and the fifth group is a descendancy group made up of a scattering of remnant bands. However, the Bureau is proposing or did propose that the ratio, the split between the descendant groups and the respective tribal groups be based on historical population ratios, not on current lineal descendancy ratios versus current tribal membership ratios.

However, in 1897, I believe that is the date, the ratio of the descendants group was only 15 percent compared to the other four federally recognized tribes. In the Saginaw situation, by contrast, they are proposing to use lineal descendancy up to 1973.

It is obvious that any group which is not bound by any minimum blood quantum or any social or political relationship to a tribe is going to accelerate much more quickly and geometrically than the tribal entity which is tied to blood quantum and social and political relationships through the tribe.

The other distribution plan which involves participation by descendants is the Peoria Tribe of Oklahoma. Again, the Bureau does not use current day population ratios for determining the split between the Peoria Tribe of Oklahoma and the citizen Peoria who had left the tribe early in the mid-1800's. In the mid-1800's, there were 55 citizen Peorias who had severed their relationship with the tribe and there were 212 members of the Peoria Tribe. The Bureau proposed, in their plan, that the historical ratio be used for division of those funds.

Again, the Saginaw plan is the only plan that the Bureau submitted in which they want to use current day ratios between descendants and members of the tribe.

Senator DECONCINI. Mr. Funke, I am sorry, but I am running out of time. I would ask that you finish your statement, and other statements will have to be submitted for the record. I want to listen to the other side of this issue before I leave, and I have appointments waiting for me, so if you would please summarize, your full statement will be in the record.

Mr. FUNKE. I would just like to point out that the 1973 Judgment Fund Distribution Act and the 1983 amendments to the Judgment Fund Distribution Act were enacted specifically with the intent that—there are various provisions in both those acts which require the Bureau of Indian Affairs to take into consideration the economic development and long-range benefits to the tribe. If the funds are distributed on the basis that the Bureau is proposing, out of over $24 million, the tribe will end up with less than $1 million. The tribe has no other natural resources or land resources in which to get on their feet. I think they have taken a very sound approach to the use and investment of these funds. I think it is in keeping with the Federal policy of the U.S. Government. It is in keeping with the way the United States has dealt with land claims payments to tribes, such as the Passamaquoddy and Penobscot Tribes, and several other tribes. Those tribes are also investing their funds without overview of the Department of Interior, and I would say they are doing an excellent job and getting an excellent return on their investments.

The Saginaw Tribe does intend to have top financial expertise in the development of their diversified investment portfolio for the use of these funds. The funds can never be dissipated; the funds can only grow. Only the income from the fund can be used for tribal programs.

[The prepared statement follows:]

PREPARED STATEMENT OF KARL FUNKE, ATTORNEY, REPRESENTING THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN

Good morning Mr. Chairman, members of the Committee and staff. I am Karl Funke, the Washington, D.C. representative of the Saginaw Chippewa Tribe and an enrolled member of a neighboring Tribe of the Saginaw, the Keweenaw Bay Chippewa Tribe of Michigan. We thank you for this opportunity to testify on S. 2823.

RELEVANT HISTORY OF THE SWAN CREEK, BLACK RIVER AND SAGINAW BANDS OF CHIPPEWA

The three Bands entered into various treaties with the United States from 1805 to 1864. Some of these treaties were with all three bands collectively while others were separate treaties with the Swan Creek and Black River Bands or with the Saginaw Band.

The Dockets 57, 59, 13E and 13F award compensation pursuant to four treaties made collectively by the three Bands in 1805, 1807, 1817 and 1819.

In a subsequent treaty of May 9, 1836, the Swan Creek and Black River Bands treatied separately with the United States. Pursuant to this treaty, these Bands gave up all their lands in Michigan and agreed to move to Kansas to a reservation which the United States set aside for them. While many of the members of these two Bands removed to the Kansas reservation, some stayed in Michigan and were landless. As of November, 1839, there were 62 Swan Creek and Black River Chippewas in Kansas.

Pursuant to a treaty with the Saginaw Band on August 2, 1855 with the United States, the members of the Swan Creek and Black River Bands who remained in Michigan were joined with the Saginaw Band and became members of the Saginaw Band. There were 138 in Michigan at the time. Thus a majority of the Swan Creek and Black River Bands consolidated with the Saginaw Band.

Pursuant to a treaty with the Saginaw Band in 1864, the Saginaw Tribe was terminated and the reservation allotted to members of the Saginaw Band, remnants of the Swan Creek and Black River Bands and Ottawas and Potawatomis residing in the area in 1855.

In 1897, the Kansas Chippewas, which numbered 45 at that time, elected to dissolve their tribe and distribute the proceeds from the sale of their lands among themselves and no longer be Indian. See 30 Stat. 92 (June 9, 1897).

In 1937, the Saginaw Band reorganized itself into the Saginaw Chippewa Indian Tribe. The base membership of the Tribe pursuant to their constitution included all persons who received an allotment on or near the former Saginaw reservation from 1883 to 1891. This included the remnants of the Swan Creek and Black River Bands who had been joined with the Saginaw Band pursuant to the 1855 treaty with the Saginaw.

On December 30, 1938 the Saginaw Band enacted an ordinance which adopted other scattered persons of these bands and their descendants living away from the reservation into the Tribe.

Thus, in 1855, 1937 and 1938, the Saginaw Tribal membership was altered to specifically include former members and descendants of the Swan Creek and Black River Bands as well as other remnant Indian groups.

BIA PROPOSED JUDGMENT FUND PLANS IN THE 98TH CONGRESS

There have been 19 Judgment Fund Distribution plans submitted by the Bureau of Indian Affairs thus far in the 98th Congress. Of the 19 distribution plans, 16 provide that the funds be distributed only to the current federally recognized Tribal entity or entities. Every one of the tribal entities who are receiving the awards pursuant to the 16 BIA proposed plans have large current day nonmember descendancy groups who will not participate in the distribution plans.

Three of the 19 BIA proposed plans do provide for participation by non-member descendancy groups. However, two of the three plans provide for descendancy participation on a much different basis than is being proposed by the BIA with regard to the Saginaw Chippewa Tribe's judgment funds. The third plan has been rejected by Congress and dealt with through special judgment fund distribution legislation.

THE THREE PLANS WITH DESCENDANCY PARTICIPATION

The BIA plan for the Potawatomi Nation for judgment funds awarded in 31 separate dockets provides for distribution of the aggregate funds between four successor tribes who are currently recognized and to a fifth decendancy group made up of several remnant bands of Potawatomi.

The critical distinction between this plan and the Saginaw BIA proposed plan is that:

The proportional share of the funds to be awarded to the descendancy group is calculated based upon the relative population of the descendant group to the population of the other four tribes as of 1896. As of that date, the descendant population was only 15 percent of the total of all five entities. The Saginaw plan, on the other hand, is not based upon relative historical population ratios but rather current population ratios. Needless to say, a descendancy population which is not constrained by any requirements of minimal Indian blood quantum and/or any political and social relationship to a tribe is going to geometrically and rapidly accelerate to very vast numbers over a relatively short period of time compared to the increase in the membership of a tribe over the same period of time which does constrain its membership by such criteria.

A further distinction is that the descendancy group in the Potawatomi plan has been actively seeking federal recognition through the BIA Federal Acknowledgement Process. The Potawatomi plan also prohibits any descendant from participation in the funds awarded the descendant group if they are eligible for membership in any of the four tribal groups.

Once the amendments to the Saginaw Constitution are adopted, many of the descendants will be eligible for membership in the Saginaw Tribe. Those who are not eligible because of lack of minimal Indian blood are neither considered Indian for any purpose by the Federal Government nor would they be eligible for acknowledgement as a recognized tribal entity.

Furthermore, if a per capita payment were to be made to descendants at this time and such descendants later enrolled in the Saginaw Tribe pursuant to the revised constitution, such descendants would receive a double benefit not open to current members—they would receive a per capita payment which current tribal members would not receive and subsequently be eligible for the benefits to be derived from the Tribal investment program.

The BIA proposed distribution plan for the Peoria Tribe of Oklahoma provides for participation of a descendant group in a similar fashion as the Potawatomi plan. In the mid 1800's some of the Peoria chose to sever their tribal ties and become known as the Citizen Peorias. As of 1867 there were 55 Citizen Peorias and 212 members of the Peoria Tribe. The BIA plan proposes division of the Peoria judgment based upon the historical population ratios existant in 1867, not current day ratios of tribal membership versus lineal descendancy to the present time as in the proposed Saginaw plan. The Peoria Tribe also passed a resolution endorsing the BIA plan.

The final BIA plan providing for participation of descendants involves the distribution plan for the Creek Nation of Oklahoma. Following westward removal of the Creek Nation after the treaty of 1832 a substantial number remained in the east and were not considered members of the Creek Nation of Oklahoma. The BIA proposed plan would have made per capita payments to an estimated 9,000 Eastern Creek descendants as they are currently known.

However, the Congress recently enacted S. 1224 this year. This legislation does not provide for per capita payments to the 9,000 descendants but provides instead that only those Eastern Creek descendancy groups who filed a petition for Federal acknowledgement with the Department of the Interior prior to enactment of the Creek Distribution Act and who are formally recognized by Interior as Tribes on or prior to December 30, 1984 may participate in the distribution. There are only two such descendancy groups who meet this criteria in the Eastern Creek descendancy group and they have estimated memberships of 1,462 and 412 respectively for a total of 1,874 instead of 9,000, the estimated total descendancy population in the east.

Additionally, there was no provision for non-member descendants living in Oklahoma or elsewhere to participate in the distribution. Contrastingly, the proposed BIA plan for Saginaw includes all descendants, wherever they are in the United States.

In still another distribution plan for the Stillaquamish Tribe, the BIA, in 1975, had originally proposed that any lineal descendants of 22 former tribes who could trace their lineage from an 1855 roll should participate in the Stillaquamish judgment. The Stillaquamish Tribe, who was then petitioning for Federal acknowledgement, opposed the 1975 plan and, on January 12th of this year, the BIA submitted a revised plan limiting the distribution to the 130 members of the Stillaquamish Tribe, not the descendants of 22 tribes.

Of the 16 BIA proposed plans where no descendants will participate, five of the plans also provide for 100 percent program/economic development and/or investment and no per capita payments to anyone. The remaining plans proposed varying percentages of per capita distribution to members and for tribal program use generally at the request of the affected tribes.

The Creek distribution legislation also provides for 100% program and investment use of the funds for both the Creek Nation of Oklahoma and the two, soon to be federally recognized, descendants entities of the Eastern Creeks. In fact, the Creek Nation of Oklahoma has opted to program and invest 100 percent of seven of their last 9 judgment awards. Their previous awards were paid out 100 percent per capita. Based on experience, they, and numerous other tribes who have received successive judgment fund awards, are tending away from per capita payments and toward greater use of the funds for programs and investment.

Of the 19 proposed BIA distribution plans submitted to the 98th Congress only one, the Creek Nation judgment, proposed participation of lineal descendants based upon current day ratios of tribal members to descendants and that plan was rejected via legislation in this Congress. In the two other plans where descendants were included the BIA recommended distribution based upon historical population ratios.

If the BIA proposed plan for the Saginaw judgment had used historical rather than current day ratios of members to descendants, 96 percent of the judgments would be distributed to the Saginaw Tribe and 4 percent to the descendants. Thus, using the historical descendancy population ratio to historical tribal membership, the Saginaw Tribe should receive roughly $23,107,114 of the combined total of all four dockets and the descendants $902,796. Therefore, using historical population ratios (as was used in both the Potawatomi Nation and Peoria Tribe distributions) the Saginaw descendants have already been overpaid by $12,205,821. Even if the non-member descendants do not receive one dime from the remaining three dockets they have already been paid over 54.7 percent of the combined total of all four dockets. See, Chart A attached.

The BIA has stated to Congress in past hearings on judgment funds:

"[G]enerally descendants of an aggrieved tribal group . . . are found to be the beneficiaries of a resulting judgment only when there is no formally federally recognized tribe that can be recognized as successor in interest to the aggrieved tribe." "Wherever possible, the Department recommends to the Congress that Indian Claims Commission awards be paid to tribal entities as they are constituted today, rather than to a distant historic entity."

See Barsh, Indian Land Claims Policy in the United States, ——— N.D.L. Rev. at 30, (NILL #004545).

In hearings on the Delaware Indian Judgment Funds before the Senate Select Committee on Indian Affairs, 96th Cong. 2d Sess. (1980) at 157 Chairman Melcher stated:

"These are judgments to rectify earlier wrongs, based on who was wronged and where they are now."

"A claim under the Indian Claims Commission Act is not an aggregation of individual claims but a group claim on behalf of a tribe, band, or other identifiable group." This flows reasonably from the rule that "tribal lands are communal property in which the members have no separate interest which can pass to their descendants who are no longer members of that group." It would appear, then, that awards should be apportioned among contemporary tribal entities as successors in interest of past entities. Tribes complain, however, that "the Bureau of Indian Affairs deals with that money as if they were dealing with an estate and passing it out to heirs." A careful review of BIA practice suggests that analysis is correct.

See Barsh, supra, at 28.

The United States Supreme Court has held that Congress need not include descendants of a tribe in enacting special judgment fund legislation. *Delaware Tribal Business Comm.* v. *Weeks*, 430 U.S. 73 (1976). Congress enacted special legislation which excluded a descendant entity of the Delaware Nation which had separated from two other groups of Delaware and subsequently elected to terminate its tribal existence and the members were made United States citizens. This group was known as the Kansas Delawares. The other two groups, the Cherokee and Absentee Delawares continued to be federally recognized tribes. They were all one group at the time of the treaty session giving rise to the judgment fund awarded to just the two federally recognized groups.

In ruling on whether the Congress violated the equal protection rights of the Kansas Delawares (who by the way had participated in a previous judgment fund awarded the Delaware Nation) the Court held:

"We are pursuaded on the record before us that Congress' omission of the appellee Kansas Delawares from the distribution under Pub. L. 92–456 was "tied rationally to the fulfillment of Congress' unique obligation toward the Indians."

"First, the Kansas Delawares are not a recognized tribal entity, but are simply individual Indians with no vested rights in any tribal property. Public Law 92–456 distributes tribal rather than individually owned property, for the funds were appropriated to pay an award redressing the breach of a treaty with a tribal entity, the Delaware Nation. It was that tribal entity, represented jointly in the suit before the Indian Claims Commission by the appellants Cherokee Delawares and Absentee Delawares, that suffered from the United States' breach, and both the Commission award and the appropriation by Congress were the means of compensating that tribal entity for the wrong done to it. Indeed, the Indian Claims Commission is not empowered to hear individuals' claims, but may only adjudicate claims held by an "Indian tribe, band, or other identifiable group." As tribal property, the appropriated funds were subject to the exercise by Congress of its traditional broad authority over the management and distribution of lands and property held by recognized tribes, an authority "drawn both explicitly and implicitly from the Constitution itself." *Delaware*, supra, at 85.

The Court added:

"We cannot say that the decision of Congress to exclude the descendants of individual Delaware Indians who ended their tribal membership and took their proportionate share of tribal property as constituted more than a century ago, and to distribute the appropriated funds only to members of or persons closely affiliated with the Cherokee and Absentee Delaware Tribes, was not "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." Id. at 87.

Descendants of the Swan Creek and Black River Bands of Chippewa who moved to Kansas, likewise, long ago, elected to terminate their tribal status. See 30 Stat. 92 (1897). Those that stayed in Michigan, became members of the Saginaw Tribe pursuant to the Treaty of August 2, 1855.

WHAT IS THE FEDERAL POLICY REGARDING DISTRIBUTION OF JUDGMENT FUNDS

Prior to enactment of the Indian Judgment Fund Distribution Act of 1973, Congress began, in 1960, prohibiting the Department of the Interior from distributing judgment funds without special judgment fund distribution legislation by Congress. As Congressman Lloyd Meeds, then Chairman of the House Subcommittee on Indian Affairs stated in 1973 when the 1973 IJFDA was on the floor of the House:

"The Congress adopted this oversight procedure because it was felt that the Department was not giving adequate consideration to more effective use of parts of these awards by tribes, such as education, economic development, and so forth. 119 Cong. Rec. at 32075 (1973)."

Prior to 1960 almost all such funds were paid out 100 percent per capita. The 1973 IJFDA required that no less than 20% of all judgment funds be used for tribal programs. Interior suggested that the figure be raised to a minimum of 52 percent. See House Rpt. No. 93–377 at 7.

In 1970, the Department of the Interior stated in hearings before the Senate:

"As a rule the Interior Department has resisted pressure, characteristically from nonreservation descendant groups or nonresident tribal members, to distribute judgment funds entirely in the form of direct "per capital" transfer payments.

"Judgment funds often constitute the only source of investment capital, and the Department is commited to a policy of encouraging all Indian tribes to utilize their judgment funds for the development of their resources—both human and natural—which would yield lasting benefits to a majority of the people involved."

See Barsh, Indian Land Claims Policy in the United States, ——— N.D.L. Rev. at 31, (NILL #004545).

Despite Interior Department statements and the amendment of the 1973 Indian Judgment Fund Distribution Act, very little if any attention has been given by the Department to develop distribution bills which would ensure long term benefits to the affected tribes. In response to Interior's continuing failure to do so, Congress added Section 3(b)(5) to the 1983 Amendments to the Indian Judgment Fund Distribution Act which states:

"Provided, That in the development of such plan the Secretary shall survey past and present plans of the tribe for economic development, shall consider long range benefits which might accrue to the tribe from such plans, and shall encourage programing of funds for economic development purposes where appropriate."

In explaining this statutory provision, the Senate Select Committee on Indian Affairs states:

"Section 2(b) to add a proviso to Section 3(b)(5) of the 1973 Act to require that the Secretary, in the development of use and distribution plans, survey past and present economic development plans of the tribe, evaluate long range benefits that might accrue to the tribe from retention of judgment funds for tribal program purposes, and actively encourage programming of such funds for such economic development purposes. The Committee notes that the 83 awards presently pending before the Department of the Interior total in excess of $422 million. Adequate programming of these funds offers tribes a significant opportunity for "self-help" in establishment of economic development programs which can be of long range benefit to the tribes and their members. *The Hearing Records which have accompanied the distribution plans submitted to this Committee are generally devoid of any indication that Interior personnel have in any way recommended, advocated, or in any way even raised questions at tribal meetings which would encourage utilization of judgment funds for program purposes.* It is the intent of this subsection to require a more active role by Interior personnel in encouraging use of these funds in a manner that will benefit the tribes over the long run."

See Senate Rpt. No. 97–658 at 5.

It is thus very apparent that the BIA's proposed plan for the Saginaw Judgment Funds is not in compliance with current Federal policy as stated by this Congress as early as last year while the legislation pending before this Committee is.

CHART A.—DISTRIBUTION OF JUDGMENT FUNDS UNDER VARIOUS SCENARIOS

DOCKETS 59, 13E AND 13F COMBINED

			BIA plan	
S. 2823 and H.R. 5960:	Amount	Percent	Amount	Percent
Tribe	$7,283,268	100	$291,331.00	4
Per capital descendants	0	0	5,713,506.00	79
Per capita members	0	0	1,238,155.50	17

DOCKETS 57, 59, 13E AND 13F COMBINED (WITH DOCKET 57 ALREADY DISTRIBUTED)

			BIA plan	
S. 2823 and H.R. 5960:	Amount	Percent	Amount	Percent
Tribe [1]	[1] $8,006,873	33.3	[1] $1,014,936	4
Per capita descendants	13,168,617	54.7	18,882,123	79
Per capita members	2,894,420	12.0	4,132,575	17

[1] Assumes adding undistributed funds of tribal share of dockets 57 to legislation.

Senator DeConcini. What is the income of the tribe now, if any, excluding any Government program income? Does anyone have that answer? Is there any income that the tribe has now?

Mr. Sowmick. Currently, we do have a little bingo operation. We have 35 full-time staff, and we are able to, of the program cuts, we are able to supplement some money there.

Senator DeConcini. As I understand it, if the legislation were passed that is presented to us here, the funds that were set aside for the tribe would be a Permanent Investment Fund with the income available for administration and the programs that Ms. Moses points out, and the principal would not be used. Is that correct?

Ms. Moses. That is correct.

Senator DeConcini. Thank you. I will accept the other statements for the record because of the time. I am going to ensure that they are placed in the record here. I apologize that time is running out, but the arguments have been made very well. Mr. Funke does an excellent job for you here as do your chairman and your executive secretary. I thank the tribal members for being with us today. If you will leave your statements with the staff, we will put them in the record.

[The following statements were submitted for the record:]

PREPARED STATEMENT OF BEN QUIGNO, TRIBAL MEMBER—SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

Mr. Chairman and distinguished members of the Committee, I am pleased to be here to present our views concerning S. 2823, the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

Passage of this legislation will enable our Tribe to accomplish its mission—"converse and develop our common (and financial) resources." We could at least begin to establish a tribal economy and improve the quality of life on our reservation. Also we could address two vexing problems that holds us back from building our future: 1) educational achievement far below our potential and 2) the lack of a stable economic base that could reduce joblessness and increase incomes.

To better understand the position of the Saginaw Chippewa Indian Tribe regarding its proposed special distribution legislation, it will be helpful to know some background about the series of Dockets 59, 13E and 13F.

In 1946, the then chief of the Saginaw Chippewa Tribe, initiated the first suit on behalf of the tribe, a federally recognized entity. The descendancy group is not a recognized tribal entity, but are considered by the Federal government individually Indians with no established rights in tribal property. The Indian Claims Commission was not empowered to hear individual claims, but could adjudicate claims held by an "Indian Tribe", such as these dockets in question. The following are my viewpoints that are based on the concerns of: tribal history, politics, Indian experiences, cultural preservation, survival, extinction, self-determination, the B.I.A.'s proposed Distribution Bill, tribal sovereignty, and a government-to-government interaction.

TRIBAL HISTORY

The Saginaw Chippewa Tribe's last two treaties in 1855 and 1864, established the Isabella Indian Reservation as a six township land area.

According to Article 6 of the Treaty of 1855 "the tribal organization of said Indians (chiefs and headmen of the Chippewa of Saginaw, Swan Creek and Black River) except so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved."

This action terminated the bands who after that the government considered only as individual Indians, not a tribe, or, recognized bands. By mid-20th century, in our community most had left the reservation, relocated to urban centers and assimilated into the mainstream. Much inter-marriage took place. After two or three generations the less than ¼ bloods vastly outnumber the full bloods. Few of the descendancy group interact, or, claim any political or social ties with the reservation. Our Indian community has become dichotomous.

In 1937, under the Terms of the Indian Reorganization Act of June 18, 1934, the Saginaw, Swan Creek and Black River people residing in Isabella County reorganized and were again a recognized tribal entity. The U.S. government issued our tribe a federal charter of incorporation. It is the tribe that initiated the action for these dockets, the descendency group took no action. Accordingly, our tribe considers itself the litigant. As this is questioned, in seeking redress the tribe as a government is requesting the federal government to enact this special statute in order to pursue self-sufficiency.

POLITICS

According to Helen Tanner, Professor of History at the University of Michigan, of 371 treaties entered into between Tribes and the U.S., our 1864 treaty is one of two most badly and unconscionably administered.

During late 19th century, the Bureau of Indian Affairs not only abandoned its statutory role as trustee and protectorate over tribal lands, but actively presided over their passage out of Indian title.

INDIAN EXPERIENCE

As a consequence, 99% of our six township reservation of 1864 was reduced to 21 allotments totaling 678 acres. Isabella county's records abound with accounts of land "transactions" between allottees and special interests, lumber and agriculture. No entity, tribal or non-tribal, could lose 99% of its assets and expect to become self-sufficient and prosper.

CULTURAL PRESERVATION

As tribal people we prefer our own associations and institutions to those in the mainstream. We feel more comfortable living our traditions and practicing the values taught us by our forefathers—the caring and sharing. It makes good sense that we work to preserve our tribalness and ceremonials.

SURVIVAL

The reservations are nice places to come home to. For many they are a refuge, a relief from the stresses and tension of lifetimes in the materialistic mainstream. The reservation is a place we can be ourselves, free to dance, to drum and sing our songs content in the knowledge that we offend no one. The America of the future has a place for its tribal communities. Our reservations must be allowed to survive.

EXTINCTION

Because the melting pot can be somewhat disconcerting, many Indian people will choose not to be assimilated. No way do we want to see the extinction of our tribalness and our Tribal communities.

SELF-DETERMINATION

In an American Indian Policy Statement the Reagan Administration declared it is "committed to helping tribe's eliminate obstacles to tribal self-government and the creation of a favorable environment for the development of viable reservation economies."

Two overriding factors stand in our Tribe's way to progress and self-determination—low educational achievement and high unemployment. The education levels our reservation children attain is a tragedy. No matter their abilities and high potential, the school system is unable to do its job—meet their educational need, 75% dropout of school. They come to adulthood ill-prepared to claim their birthright—career-making and parenthood.

This is an illogical consequence, but that is life on our reservation. This is conditioned by a 50% unemployment rate, 600% higher than the nation's average. The local job market is very limited. It is strong in government jobs and weak in industry. To make matters worse it reflects a tendency towards exclusivity. At one time there was an "Indian wage and a white man's wage." By no stretch of the imagination can we expect that local employers will extend themselves to hire our hard core unemployed. This has been our history since treaty times.

If this situation is not corrected, half of our employables will be programmed to needlessly spending lifetimes in depressed conditions. They will enter the job market only when the tribe succeeds in creating a reservation based economy.

That is one of many reasons our tribe is using its sovereign powers in requesting this distribution legislation, to fulfill its mission and work for the wellbeing of our members.

Meanwhile we must contend with a variety of hard to reverse stereotyped images. Many of our mainstream neighbors consider us a drain on the local economy.

The 1980's is a time when opportunities are greatest. The tribe's investment fund is a resource to help us become self-sufficient.

THE BIA'S DISTRIBUTION PLAN

The agency that abandoned its trustee role and stood by while our reservation was passing out of our ownership now proposes to introduce legislation that will not only take away our Tribe's last and best opportunity to become self-sufficient but insure our continued dependency and limit our capacity to work towards self-determination. Historically, the B.I.A. has largely by-passed Michigan Tribe's in programs and services in favor of the larger Tribes. The B.I.A. does not intend to invest the $7,000,000, but oversee its distribution and dissipation, which could take at most a few weeks to spend. From experience we know the greatest beneficiaries will be area merchants, people who care little about us, only our money as long as it lasts. My feeling is that the B.I.A. plan is counterproductive, we will be the worse off because there was an opportunity to reduce our dependency state, but the B.I.A. propose to give it away. History repeats itself. The B.I.A. should work for, not against us.

TRIBAL SOVEREIGNTY

The Saginaw Chippewa Indian Tribe of Michigan as a "dependent domestic nation within a nation" has a mission to use its inherent powers to govern itself as well as serve its members and promote their wefare.

Because we live with them, we know our problems better and care more about their solution than does the B.I.A. And we do not have to deal with personnel in a Washington office, hundreds of miles removed from real issues and concerns. We have confidence that the Tribes' investment plan long-term benefits will prove a better option than the B.I.A.'s distribution legislation. The Bureau's distribution plan is certain to diffuse and defuse the potential and power of $7,000,000 to accomplish much good.

GOVERNMENT-GOVERNMENT INTERACTION

The Government of the Saginaw Chippewa Indian Tribe of Michigan requests the Government of the United States to consider and approve passage of the Tribe's Distribution Bill introduced in the Senate as S. 2823 and in the House as H.R. 5960.

In remembrance of our forebearers whose recompense for lands relinquished was heartbreak, anguish and a future laden with uncertainty. They anguished when the Government told them we need your lands, you are going to have to move.

In remembrance of our ancestors, who guided their lives by the finest of all principles, the cultural values of caring, sharing, and always the concern for their children. They might tell us, "you are about to decide what to do about the recompense for our deprivation, think not about yourselves, put away the compelling urges to induce your desires for things that will disappear like fog before the morning sun."

Our counsel would be: "Do your best for your children, and your childrens children, for that is the way we lived, and it was a good way."

In remembrance of our forefathers, we ask our Government that the "Principal Investment Fund" be held in trust by the Tribal Council as a Memorial in perpetuity. Megwetch.

PREPARED STATEMENT OF KIM SOWMICK, TRIBAL MEMBER, SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

Mr. Chairman and distinguished members of the Committee, I am pleased to present our views concerning H.R. 5690, the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

I am a member of the Saginaw Chippewa Indian Tribe. I am currently working as Tribal Bookkeeper. I have held positions as High School Indian Counselor Secretary and Legal Counselor Aide for the Tribe. I worked at Dow Chemical Legal Department on a litigation suit. My father served as Tribal Chairman and Tribal Administrator for seven years and was a Council member for nine years. My mother is a Community Health Representative and has been a Council Member for eleven years.

In the positions that we have held, we have been and are concerned with the Tribe's future. We are concerned with health care, elderly, education, and economic development of the tribe as a whole. Not all of our tribal members can get health coverage or be able to properly utilize the health board or clinic which is located on the reservation due to the fact that they live outside of the six townships which is considered the reservation. Some of our elders who need round the clock care are not able to make it to the clinic, but if we were to have those funds available, they would be able to receive their care without leaving their homes. I have heard many members who live outside the six townships complain they are not eligible for any health benefits, but where a person chooses to live shouldn't restrict him from receiving his due benefits as a tribal member. With the Indian Health Service, we have unfair rules and regulations. Some elders who are able, need transportation for doctors appointments and errands.

Growing up in an extended family structure we were taught, not so much in words, but lifestyle, to respect our elders. A good example of the way we were taught is just recently there was a pow wow with 19 drums. No money was involved, it was "To honor our elders". This past weekend a pow wow was held in honor of one of our elders of the Saginaw Chippewa Indian Tribe. This I consider an education in the way of life.

Working as a secretary for the High School Indian Counselor, we had a list of all Indian students and less than half actually claimed they were Indian. For years we were taught to be proud, but in the classrooms we're ridiculed for not knowing as much as the non-Indian. If we were to be in a classroom of our peers, we would have been more willing to learn. Many of our youth have attended Indian Boarding Schools, including my mother and grandmother, and have completed their high school education. I am the oldest of four children and I did graduate from the public school. My two sisters and one brother dropped out and later received their GED's. The GED classes were held at the Tribal Center where there were other Indians striving for the same goal, their education. If the Tribe were to have the funds available for an Indian School, our youth would be more determined to receive their education because there would be no shame in getting it, thus, providing a promising future of good leadership. And good leadership is needed in sound economic development. We would have capable people to handle potential tribal enterprises, with the economy as it is on the reservation our hope is in tribal enterprises.

Currently, our tribal bingo employs a small handful of our members, which is more than those who are employed by area businesses. Just recently, a man was laid off from his job with a carpenter. The carpenter got a bid on building a barn in which the Indian man showed him how. Although it is a minute situation, it emphasizes the fact that our area businesses will take what they need, but give nothing in return.

In closing, the services I mentioned would help the Tribe's future as a whole instead of a number for a very short time. As in the Old Testament, the story of Cain and Abel comes to mind. Abel was favored by God and Cain was not pleased with that fact. So Cain killed Abel. When God asked Cain where Abel was, Cain replied, "Am I my brothers keeper?" With this in mind, it seems that our descendants are saying, "Am I my brothers keeper?" While trying to defeat the purpose of the Tribe's plan for independence. Thank you.

Senator DECONCINI. Our next witness will be Victoria Miller, coordinator of the Saginaw Descendancy Group. Ms. Miller, if you would introduce the other people who are with you, and let me say that we are not going to have time for all statements to be read here. They will be in the record for all members of the committee to see. If you would please summarize your position regarding this legislation, I would appreciate it.

Thank you.

Ms. MILLER. Thank you, Senator.

To my right is Leonard Isaac, a descendant from Bay City. To my left is John Davis, a member of the Saginaw Chippewa Tribe living in Burton, MI. I am Victoria Miller, a descendant. My grandfather was ceded land in the 1864 treaty in Mount Pleasant, and I was born and raised in Saginaw, MI.

The gentlemen have just about 5 seconds' worth of something to say, and then I would just briefly outline what I am going to submit to you.

STATEMENT OF LEONARD ISSAC OF BAY CITY, MI

Mr. ISSAC. Mr. Chairman and members of the committee, we are here to represent all nonreservation Indians of Swan Creek, Black River, and Chippewa Indians of Michigan. The Council at Mount Pleasant has a bill on the floor stipulating that they want to control dockets Nos. 59, 13–E, and 13–F, and any future docket that may come up. This would not entitle any of the nontribal members to any portion of the moneys. Therefore, this bill would not benefit us in any way.

We are here today to implore you to give further consideration to this bill and not to be too hasty to make a decision in accepting it. We believe the money should be distributed as previously, so everyone would benefit. If we do need to outline a plan suitable to all Indians, we would like to incorporate a plan to benefit all Indians involved, not just those on the reservation.

Thank you.

STATEMENT OF JOHN DAVIS OF FLINT, MI

Mr. DAVIS. Mr. Chairman, my name is John Davis, a tribal member living off the reservation in Burton, MI, outside of Flint.

Listening to the program that the member of the Isabella Tribal Council has submitted, it is well and good for the people who live on the reservation. I, myself, as a tribal member, living off the reservation, do not qualify. I am not eligible for any benefits that they have to offer there. I would like to see the off-the-reservation Indians and the descendants receive a per capita share of this docket No. 59 so they might benefit also.

The programs that they have are well and good. If I were able to receive any benefits, I would be for it 100 percent. I, too, have lived on the poverty level. In fact, I still am, as the lady from Mount Pleasant stated. I would like to see all Indians benefit by this award that is coming up, not just reservation people, but everybody off the reservation also.

I am not the only Indian tribal reservation member who does not live on the reservation. There are a few of us scattered around. We cannot receive any benefits whatsoever up there. We have been denied because we do not live within the boundaries of the reservation.

So, as I said, I would like to see each and every tribal member that is off the reservation, plus the descendants, receive a little per capita of this docket No. 59. The programs they have to offer up there, as I stated before, are well and good. Let the people up here plan what they do and see that everybody is well taken care of in the future.

Senator DECONCINI. Excuse me, are you an enrolled member of the tribe?

Mr. DAVIS. Yes, sir. I am considered a tribal member.

Senator DECONCINI. You are considered a tribal member but you live off the reservation.

Mr. DAVIS. Yes, sir.

Senator DECONCINI. Are there a number of people who are not enrolled members, who have been denied membership?

Mr. DAVIS. I do not know about being denied membership, but I was sent a letter from BIA at Sault Ste. Marie stating that I am a tribal member. How that came about, I do not know.

Senator DECONCINI. Does the tribe recognize you as a member? I guess my question is, if this legislation is passed as it is before us here, if you are an enrolled member, you would benefit. If you are not an enrolled member, you would not benefit. You would not benefit if you are considered of the descendancy class.

Mr. DAVIS. I received a letter which I was going to bring along, but in our haste to make this trip, I forgot it. The letter stated—it was from the BIA office in Sault Ste. Marie—stating the reason that I do not qualify for any benefits because I do not live within the boundaries of the Isabella Reservation.

Senator DECONCINI. Then you are telling me that in order to be considered a member of the tribe by the tribe, you have to live on the reservation.

Mr. DAVIS. That is my understanding, yes.

Senator DECONCINI. Or the alternative, the staff says, is if you receive services from the BIA and you live off the reservation, then you are considered a member of the tribe;

Mr. DAVIS. I do not receive any services whatsoever.

Senator DECONCINI. Please, go ahead.

Mr. DAVIS. One more thing I do not understand is that I have quite a few relatives up there in Flint, MI, and when docket 57 was paid off, they were considered descendants. I was considered a tribal member along with my brother and my mother also, but I am speaking about my brother and myself at this particular time. We were considered tribal members, and here our close relations were considered descendants, and we came down the same bloodline from the same grandfather. How my brother and I got mixed up as tribal members, I do not know.

Senator DECONCINI. Thank you.

Mr. DAVIS. Thank you.

STATEMENT OF VICTORIA MILLER, COORDINATOR, SAGINAW DESCENDANCY GROUP

Ms. MILLER. We, the descendants of the Saginaw, Swan Creek, Black River Bands of the Chippewa Indians in the State of Michigan, join our voices to speak to you today with the hope that we will be heard and understood. For 200 years or more, Indian people have lived silently with the many policy changes and attitudes of the predominant society. Eventually, we had no voice, and it did not matter to this society that we could no longer be seen or heard.

We, the descendants, do not want this same thing to happen between the Chippewa Tribe and the Chippewa descendants. We, too, want to be heirs to our ancestors' awards, just like the tribal Chippewas.

We come before you today to voice our concern and disagreement with S. 2823 that you introduced June 28, 1984.

Some of our concerns are: The fund will be used exclusively for investments, including loans to enrolled members of the tribe.

Our concern: The question was asked at the constitutional convention on Saturday, May 19, 1984, at Mount Pleasant, what recourse does a descendant have if he or she meets all the requirements to become a member of the tribe and the tribal council votes to deny you adoption to the tribe? The answer from the tribal attorney at the time was none; there is no recourse. There are no provisions in the current nor in the proposed Constitution of the Saginaw Chippewa Indian Tribe of Michigan to file an appeal or grievance to become a member once adoption has been denied.

Testimonies were given at the public hearings that were held in Saginaw on April 19 and July 20, 1984, from individuals who are descendants who had applied for membership on three different occasions and were turned down each time by the tribal council. They met all the tribal membership requirements. They tell us to apply for membership and move back to the reservation, yet they deny you adoption to membership status. As for moving back to the reserve, this would be impossible for an additional 3,000 or more descendants who never lived there in the first place.

Our ancestors were drawn to the urban areas in the early 1920's to seek employment, leaving approximately 414 on the reserve by 1938. Today, in 1984, the tribal membership numbers approximately 891 with only 300 or less living on the Isabella Reservation, with a few more living within the six townships in Isabella County and certain townships in Arenac/Bay County known as Saganing.

Testimony was also given by tribal members living in other areas of the State that they are not even contacted for their input or vote on any of the decisions that concern them as tribal members. They are told they are not eligible for any of the services offered that other tribal members are because they live off the reserve.

Is this fair that off-reservation tribal members had 20 percent taken off the top of the last judgment award in docket 57, distributed in 1983, to be kept on the reservation and still they are ineligible for any services or benefits of the tribe? No, it isn't fair. Not when they are being treated like they are descendants and the descendants received 100 percent of their per capita payment.

In the research report on the judgment awards from the U.S. Department of Interior, Deputy Assistant Director of Indian Affairs Operations, dated October 3, 1983, on docket 59, 13–E, and 13–F before the U.S. Claims Court and Indian Claims Commission, the funds were also appropriated for the dockets by March 2, 1979, the following was determined, and I quote:

> We have determined that the Saginaw Chippewa Indian Tribe of Michigan, as organized under the Indian Reorganization Act (IRA) is representative of a a portion of the "Chippewa Nation" of the treaties of 1805, 1807, and 1817 and entitled to participate in the judgment funds as a tribal entity.
>
> We have also determined that there is a substantial number of descendants of the treaty group who do not qualify for membership in the IRA group, who are equally entitled to participate in these judgment funds.
>
> We recommend that the funds be divided between the Saginaw Chippewa Tribe of Michigan and the Saginaw Chippewa descendants on the basis of numbers in each group, as designated by the payment roll, approved January 28, 1983.

We have submitted several hundred signatures on petitions to various Senators and legislatures and now we have letters to submit to you today which were decided on at the public hearings where 300 or more were at our last meeting of tribal members and descendants and they gathered there to voice their discontent to the tribal plan.

We feel we have a right, as descendants of the Saginaw, Swan Creek, and Black River Bands of the Chippewa Indians to an equal share of the above-named judgment awards. Therefore, based on the preceding information, we pray that you recommend to the full body disapproval of both H.R. 5960 and S. 2823 and recommend approval to incorporate the proposed secretarial plan, Saginaw descendants entity.

This statement is made on behalf of myself and the descendants of the Saginaw Chippewa Bands.

Senator DECONCINI. Thank you, Ms. Miller. I appreciate your testimony and that of Mr. Davis and Mr. Issac.

I have not decided what to do with this subject matter. I have to tell you that I find your argument compelling that wrongs that were perpetrated certainly should extend to descendants, but I also have a deep feeling that those who are living on the reservation who have high unemployment and many, many needs should certainly have some higher consideration of the distribution of these funds because the need is there. Housing is poor, unemployment is higher than in the areas off the reservation. I find a real dilemma in being put into a position that this Senator does not care to be in, making the decision of playing God, who is going to get a few thousand dollars and who is going to get the benefits of an investment fund.

I just have to tell you, as one Senator, looking at this and trying to make some determination, it seems to me that those people who are living there on the reservation certainly should have some priority for these funds based on need, not based on the merits of descendancy on which your argument is very compelling, because there is no question that the descendancy is there.

We will have to wrestle with that subject matter here in the committee.

Ms. MILLER. Excuse me, please. Senator, I would like to offer these letters and these petitions which I don't believe you have seen.[1] The first letter is in protest of the mismanagement of funds on the reservation, and I do not want to get into that. It is a letter from a person who is well aware, and he has left his name and address, if you should want to contact him concerning business enterprises that were started on the reservation and went defunct.

So, these are also to be submitted.

Senator DECONCINI. Thank you; we will accept them.

I have no further questions or comments. Does the staff have any?

Mr. ALEXANDER. No, thank you.

Senator DECONCINI. Thank you very much.

Ms. MILLER. Thank you.

Senator DECONCINI. I am going to leave at this point although the committee will continue to hear testimony on S. 2824, and I think Mr. Fritz again is the primary witness. Mr. Fritz, if you would, please present your testimony to the staff. I thank you very much.

Mr. FRITZ. Thank you, Mr. Chairman.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY STEVE FERRACA

Mr. FRITZ. It is always a pleasure to testify before the staff director and members of the staff of the committee. With me today is Mr. Steve Ferraca, and it is a pleasure to be here to comment to the committee on our views of the Department of the Interior on S. 2824, a bill to provide for the use and distribution of certain funds awarded to the Wyandotte Tribe.

I have a complete statement for the record, and I will just give a brief synopsis of our position.

The Department recommends enactment of the bill if amended as suggested.

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[1] Retained in committee files.

S. 2824 provides for the division of judgment funds between the organized Wyandotte Tribe of Oklahoma and the Wyandotte descendant group also known as Absentee Wyandottes. The bill seeks to repeal a 1982 act for the disposition of earlier Wyandotte awards on the grounds that the formula for the division of the funds, as contained in that act, is inequitable. S. 2824 also provides for the utilization of the tribal share and the descendant share.

On August 17, 1978, the Indian Claims Commission, in docket 139, awarded approximately one-half million dollars to the Wyandotte Tribe as it was constituted in 1805. This award represents the Wyandotte share of the additional compensation made to five tribes who ceded about 3 million acres in north-central Ohio under the Fort Industry Treaty of July 4, 1805. On January 19, 1979, the U.S. Court of Claims, in docket 141, awarded approximately $2.35 million to the Wyandotte Tribe as it was constituted on January 4, 1819, as additional compensation for approximately 2 million acres of land in northwestern Ohio ceded under the treaties of September 29, 1817, and September 17, 1818.

On January 20, 1983, a new Wyandotte award totaling $200,000 was appropriated in dockets 212 and 213. The award derives from a claim for the fair market value of land ceded under the treaties of 1832, 1836, and 1842; and from an accounting claim for the handling of tribal lands and moneys.

The act of December 20, 1982, divides the funds in dockets 139 and 141 in terms of $^{308}/_{510}$ to the Wyandotte Tribe and $^{202}/_{510}$ to the descendant group. This division is based on the respective numbers of tribal members and the absentee Wyandottes as of the making of the census rolls for both groups in 1896. The act reflects the recommendations regarding division made by the Secretary of the Interior at the time the awards were handled.

It was clear that the beneficiary entities of dockets 212 and 213 would be the same as those in earlier awards. However, the Department's continuing research began to cast doubt on the equity of the division formula and resulting fractions or percentages. At about that time, that is, last year, the Wyandotte Tribe began expressing similar concerns and found, as did the Department, that the tribal membership totaled about 2,757 people, while the numbers of known descendants did not appear to be greater than 535 people.

It became clear, therefore, that the division found in the act would result in disproportionately large payments to the descendants, an inequity concerning which we could not remain silent. It is now our position, in fact, that whether or not the respective figures became known, we would have been better advised to propose a division based on current rolls.

S. 2824, in section 3, provides for the division of funds on the basis of current rolls for the two beneficiary entities; and, in section 8, provides for the repeal of Public Law 97–371. We strongly support both provisions.

However, the bill does pose a problem in section 5(b) concerning the disposition of programming funds of the Wyandotte Tribe of Oklahoma; 20 percent of the tribal share is to be utilized for programming purposes; however, it is not provided that such funds shall be held in trust by the Secretary. While this section of S. 2824 generally conforms with a tribal resolution for the disposition of the funds, the provision is in conflict with our obligation to protect and enhance such funds until they are actually expended for programming purposes. S. 2824 would remove the programming funds from trust status in that the bill substitutes the tribal business committee for the Secretary of the Interior as trustee.

The bill contains some language that is ambiguous and unclear. These problems were found in section 2 and section 7, and in order to clarify and correct such situations, we offer several amendments.

This concludes my synopsis of the prepared statement, and I will be pleased to answer any questions which members of the committee or staff might have.

Mr. **Alexander**. Thank you. We appreciate that.

Would you provide us with your views on the validity of the section 2 distribution formula used in S. 2824 in terms of the appropriation of the judgment funds among the two affected groups?

Mr. **Ferraca**. We have found that it would be equitable to simply divide the funds in terms of the current rolls. As the testimony just given reveals, we found that a very disproportionately large payment would be made to the descendants if the current formula found in the 1982 act were followed. In short, we find nothing more equitable than to make current both rolls.

Mr. **Alexander**. I take it then that both rolls are not current?

Mr. **Ferraca**. They are almost current. The tribal roll is in good shape, and we do not know of any greater numbers of descendants that might be appearing.

Mr. **Alexander**. Almost is one of those words for which different people might have different interpretations. Can you give us a hard date when you intend to have those rolls current? Are we talking 1 year or 2 months? Some frame of reference would be helpful.

Mr. **Ferraca**. The present bill provides for a 180-day period in which to file. Given that, it should take, at best, let us say, 1 year from the end of the filing period.

Mr. **Alexander**. One year?

Mr. **Ferraca**. It should not take longer in this particular case.

Mr. **Alexander**. Mr. Fritz, you indicated in your statement and have given us amendments to the effect that would put the 20 percent of the funds allocated to the Wyandotte Tribe of Oklahoma for program purposes to be placed under the Secretary's authority, in effect, in trust. What is your rationale for wanting to have this responsibility in this bill?

Mr. **Fritz**. Essentially, the concern is to conserve the corpus of the trust. It can be done, as has been pointed out previously today during testimony on the Saginaw bill. Instances occur throughout Indian country where tribal groups have had the authority to go ahead and assume management of their own corpus of the trust, and the Secretary then has no responsibilities arising out of the trust relationship for management of those assets. From my own perspective, and I am speaking of a personal perspective as opposed to one which has been cleared and gone through all the hoops by the administration, if there is a competent and cogent plan for management of these assets to protect them, I see no problem in those assets being managed, for example, like the Passamaquoddy and the Penobscots would do with the land claims money arising out of the Maine Land Settlement Act.

So, if there is a competent plan for the management, I think we could look at that. However, at this juncture, we are just seeing it goes to the Reservation Business Committee. As a result, we are terribly concerned about the transfer of those funds on an immediate basis.

Mr. ALEXANDER. As an alternative to the recommendations that you made, would you be willing to discuss, I would assume, then, a provision for some plan and a waiver of your responsibility?

Mr. FRITZ. Certainly. We could even put it in a fashion like we did in the Maine land settlement for a transitional period so that we could determine, for example, how they are going to do it to make sure that all the i's are dotted and the t's are crossed in a period of time. I think we could certainly negotiate that.

Mr. ALEXANDER. Thank you very much, gentlemen. We appreciate your being here today.

Mr. FRITZ. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR ON S. 2824

Mr. Chairman and Members of the Committee, I am pleased to appear before this Committee to present the views of the Department of the Interior on S. 2824, a bill "To provide for the use and distribution of certain funds awarded the Wyandotte Tribe."

We recommend enactment of the bill if amended as suggested.

S. 2824 provides for the division of judgment funds between the organized Wyandotte Tribe of Oklahoma and Wyandotte descendant group also known as Absentee Wyandottes. The bill seeks to repeal a 1982 Act for the disposition of earlier Wyandotte awards on the grounds that the formula for the division of the funds, as contained in that Act, is inequitable. S. 2824 also provides for the utilization of the tribal share and the descendant share.

PERTINENT HISTORICAL BACKGROUND

Beginning in 1795, after the defeat of Little Turtle at the Battle of Fallen Timbers, the Wyandottes, earlier known as Hurons, began ceding their lands in various treaties with the United States. In 1842, when they ceded their last lands at the Treaty of Upper Sandusky, the Wyandottes agreed to move to a reservation west of the Mississippi. In 1843, pursuant to this agreement, the Wyandottes settled on a reservation in eastern Kansas on land they had purchased from the Delaware Tribe.

In 1855, at the Treaty of Washington, a majority of the Wyandottes agreed to allot their lands in severalty and become citizens of the United States. The remainder of the members maintained their tribal status. The great tide of migration into Kansas and the pre-Civil War strife which accompanied it resulted in many of the Wyandottes losing their allotments. To escape this situation a band of 200 Wyandottes moved in 1857 to the Indian Territory and lived among the Seneca. The Civil War caused both the Wyandotte and the Seneca to retreat to Kansas where they remained until 1865. In 1867, after returning to the Indian Territory, by the terms of the Omnibus Treaty of that year the Wyandotte received their own reservation. That reservation was allotted in 1893.

The Wyandotte Tribe of Oklahoma adopted a constitution and bylaws, pursuant to the provisions of the Oklahoma Indian Welfare Act of 1936, which was ratified on July 24, 1937. As a result of the "Termination" policy, Federal supervision over the Wyandotte Tribe of Oklahoma was ended under the Act of August 1, 1956, 70 Stat. 893. The tribe was restored to Federal status by the Act of May 14, 1978, 92 Stat. 246.

The Wyandottes who took land allotments in Kansas under the provisions of the Treaty of January 31, 1855, became known as the Citizen or Absentee Wyandotte Indians. Owing to the often violent atmosphere and the increased settlement in the Kansas area many of these people lost their lands and drifted toward the Quapaw Agency to join the other members of the tribe.

Many of these, about two hundred, applied to the Quapaw Agency too late to participate in the allotment of the Wyandotte lands there. The Act of August 15, 1894, 28 Stat. 266, 301, contained a provision for them to be allotted elsewhere in the Indian Territory. The Act of June 10, 1896, 29 Stat. 321, specified that lands of the Choctaw and Chickasaw Nations were to be used. Under the provisions of that Act a roll of the eligible Absentee Wyandottes was prepared by Special Agent Joel T. Olive.

For various reasons, the Absentee Wyandottes were not able to secure allotments on the Choctaw and Chickasaw lands per the 1896 Act. To rectify this situation, the Act of April 28, 1904, 33 Stat. 519, provided that those persons on the Olive Roll be allowed to choose 80-acre allotments from the public domain. The result of this Act is that the Absentee Wyandottes took allotments on the public lands throughout the United States and ceased to maintain any tribal affiliation.

BACKGROUND OF THE AWARDS

On August 17, 1978, the Indian Claims Commission in Docket 139 awarded $561,424.21 to the Wyandotte Tribe as it was constituted in 1805. This award represents the Wyandotte share of the additional compensation made to five tribes who ceded about 3,000,000 acres in north central Ohio under the Fort Industry Treaty of July 4, 1805, 7 Stat. 67. Funds to cover this award were appropriated on October 31, 1978. On January 19, 1979, the United States Court of Claims in Docket 141 awarded $2,348,679.60 to the Wyandotte Tribe as it was constituted on January 4, 1819, as additional compensation for 2,032,233 acres of land in northwestern Ohio ceded under the treaties of September 29, 1817, 7 Stat. 160, and September 17, 1918, 7 Stat. 178. The funds to cover this award were appropriated on March 2, 1979. The Act of December 20, 1982 (P.L. 97–371) provides for the division and use and distribution of the funds in Dockets 139 and 141.

On January 20, 1983, a new Wyandotte award totaling $200,000.00 was appropriated in Dockets 212 and 213. The award derives from a claim for the fair market value of lands ceded under the treaties of 1832, 1836 and 1842; and from an accounting claim for the handling of tribal lands and monies.

S. 2824 provides for the division and use and distribution of all of the above awards and repeals the Act of December 29, 1982.

RECOMMENDATIONS

The Act of December 20, 1982 (Public Law 97–317) divides the funds in Dockets 139 and 141 in terms of $^{308}/_{510}$ to the Wyandotte Tribe and $^{202}/_{510}$ to the descendant group. This division is based on the respective numbers of tribal members and the Absentee Wyandottes as of the making of census rolls for both groups in 1896. The Act reflects the recommendations regarding division made by the Secretary of the Interior at the time the awards were being handled.

It was clear that the beneficiary entities of Dockets 212 and 213 would be the same as those in the earlier awards; however, our continuing research began to cast doubt on the equity of the division formula and resulting fractions or percentages. At about that time, meaning late last year, the Wyandotte Tribe began expressing similar concerns and found, as we did, that the tribal membership totaled about 2,757 while the numbers of known descendants did not appear to be greater than 535. The latter figure has been largely based on names and addresses mailed to the Miami, Oklahoma Agency of the Bureau of Indian Affairs and the estimates of knowledgeable staff in Muskogee and Miami. It became clear, therefore, that the division found in the Act would result in disproportionately large payments to the descendants, an inequity concerning which we could not remain silent. It is now our position, in fact, that whether or not the respective figures became known we would have been better advised to propose a division based on current rolls.

S. 2824, in section 3, provides for the division of the funds on the basis of current rolls for the two beneficiary entities; and in section 8 provides for the repeal of Public Law 97–371. We strongly support both provisions.

The bill does, however, pose a problem in section 5(b) concerning the disposition of programing funds of the Wyandotte Tribe of Oklahoma. Twenty percent of the tribal share is to be utilized for programing purposes; however, it is not provided that such funds be held in trust by the Secretary. While this section of S. 2824 generally conforms with a tribal resolution for the disposition of the funds (Resolution No. 020484A of February 4, 1984), the provision is in conflict with our obligation to protect and enhance such funds until they are actually expended for programing purposes. S. 2824 would remove the programing funds from trust status in that the bill substitutes the Tribal Business Committee for the Secretary of the Interior as trustee.

The bill contains some language concerning the preparation of rolls, or concerning enrollment insofar as the division of the funds is affected, that is ambiguous or otherwise unclear. These problems are found in section 2 and section 7 to clarify or correct such situations we offer following amendments:

PROPOSED AMENDMENTS

Concerning the handling of the tribal programing funds we recommend that section 5(b) be amended by inserting in line 3 after the term "shall" the following: "be invested by the Secretary and utilized by the Tribal Business Committee on an annual budgetary basis, subject to the approval of the Secretary, and . . ."

We recommend that section 5(b)(2) and (3) be combined as a new section 5(b)(2) to read: "the portion of such funds in excess of $100,000 shall be utilized for (A) higher education, including grants-in-aid and scholarships; (B) medical and health needs, including prosthetics; (C) economic development programs; (D) land acquisition; (E) tribal investment program; (F) tribal cemetery maintenance; (G) tribal building maintenance; and (H) tribal administration."

Regarding enrollment provisions we recommend that the following sentence be added to section 2(b)(2): "In the event the deadline date falls on a holiday or weekend, the deadline date shall be the next working day."

Section 2(b)(3)(A) is unclear as to whether rejected applicants may appeal, and if so whether the Secretary's decision would be final. We recommend the deletion of this subsection. The following subparagraph (B) appears to defeat the division approach found in S. 2824 in that it is impossible to allocate tribal and descendant shares in an equitable manner until the respective rolls are finalized. We recommend the deletion of this subsection.

Section 2(b)(4)(B), to avoid confusion, should be amended to read: "the preparation of the roll of Absentee Wyandottes as provided in section 2(B)(1), and."

In section 2(b)(4)(c) we recommend that the term "may" be changed to "must" and that the following be added: "Applications shall not be furnished to persons requesting same after the deadline date."

In order to make section 7 of S. 2824 consistent with provisions of the Indian Judgment Funds Act, we recommend that it be amended to read:

"SEC. 7. None of the funds distributed per capita or held in trust under this Act for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, and Federal or federally assisted programs."

This concludes my prepared statement. I will be pleased to answer any questions you or Members of the Committee may have.

Mr. ALEXANDER. Before we proceed, I have a prepared statement submitted by Senator Nickles which I will place in the hearing record at this point.

[The statement follows:]

PREPARED STATEMENT OF DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Mr. Chairman, I want to express my sincere appreciation to you and the staff of the Select Committee for scheduling this hearing so promptly on my bill to distribute certain judgment funds to the Wyandotte Indians.

As you know, this legislation will provide for the distribution of judgment funds, plus accrued interest, resulting from four dockets to the members of the Wyandotte Tribe of Oklahoma and to the lineal descendants of individuals listed in the "Census of Absentee or Citizen Wyandotte Indians."

The original formula for distribution of the funds under dockets 139 and 141 would have produced disproportionate shares to certain individuals. The recommendation by the Bureau of Indian Affairs based on an extensive investigation was that the formula in P.L. 97-371 should be amended. The tribe and the Absentees have met and agreed upon the change represented in this bill. The quick action by this committee, after my introduction of S. 2824 in late June, is a demonstration of the good will of this Congress to correct this inequity to enable the distribution of the funds which have been appropriated since 1978 and 1979.

The other dockets, contained in this bill, are 212 and 213 which the U.S. Claims Court awarded the Wyandotte Tribe on December 9, 1982. Funds were appropriated to satisfy this judgment on January 20, 1983. The Congress would, I know you will agree, be setting a record if legislation is passed during the 98th Congress to distribute these funds.

The witnesses, from not only the Wyandotte Tribe of Oklahoma but representatives of the Absentee Wyandottes, appearing before you today will provide substantive evidence of the agreement for a fair distribution of the judgment funds.

Again, thank you for this expeditious action on the long-awaited solution to satisfy the debt to the Wyandotte Indians as determined by the courts of the United States.

Mr. ALEXANDER. Our final witness this morning is Chief Bearskin of the Wyandotte Tribe of Oklahoma.

STATEMENT OF CHIEF LEAFORD BEARSKIN OF THE WYANDOTTE TRIBE OF OKLAHOMA

Mr. BEARSKIN. Mr. Chairman, first I want to tell you about the appreciation that my people have for the fast response in getting this hearing before the Senate committee. We are deeply grateful.

Mr. ALEXANDER. Thank you.

Mr. BEARSKIN. I am Leaford Bearskin, Chief of the Wyandotte Tribe of Oklahoma. I would like to make some statements regarding the bill, S. 2824.

We have no objections to any portion of the bill with the exception of one thing in the bill which I will discuss in just a moment. I heard the testimony of the Assistant Secretary of the BIA, and he expressed some concern about the capability of our tribe to manage our own affairs, conduct our financial endeavors on our own, and I would like to say that my tribe and my people share the same concern.

I have a business committee consisting of three ladies who are mature and capable, I am sure, of making decisions, financial decisions, for the tribe. I have a second chief, a young man who is fully capable. He is a man with a family, very concerned about the welfare of my people, as am I. As to our capabilities for managing the funds, we will have, and have already made arrangements for, a lawyer to develop a contract, an ordinance, rather, financial ordinance, for our tribe controlling the handling of all moneys of the tribe. In it we will have controls on investments; we will have controls on expenditure; we will have signs and countersigns for the expenditure of money; we will have controls for an outside audit annually to account for all our moneys; controls for recordkeeping of expenditures and the receipt of all funds.

The 20 percent allowed to the Wyandotte Tribe of Oklahoma will go into an investment fund. The principal will not be touched. We will operate our tribal operations off of the investment and interest money that we receive from this 20 percent.

Mr. ALEXANDER. Has that ordinance been drafted yet?

Mr. **Bearskin**. No, sir. The reason it has not is that we are awaiting the outcome of this hearing and as soon as we get the outcome of the hearing, if it is in our favor, it will be drafted. It will be gone over by the business committee and the lawyer concerned. We may even have another lawyer check it.

We think we can manage our money. We want to manage our money. One of the reasons that we do not wish to have the Secretary of the Interior control our money is the response time required to get action from the Bureau of Indian Affairs and the Secretary of Interior on business matters or business decisions that must be made, sometimes on the spot. If I am dealing with some business leaders in industry or whatever endeavor we get into, then I must be able to respond with answers immediately. I need to do this in order to deal with business people.

One other objection to this bill that I have is the timetable on completion of the Absentee Wyandotte rolls and the payment of our money. There are timetables in the Code of Regulations which is the bible for both the BIA and our tribal people and has time limits established. These have never been met. It has been 6 years—1978 was our first appropriation. Our second appropriation was 1979. They were the two major ones and were in the provisions of the first act concerning our claims money. At that time—the act was dated December of 1982—it stated that there was a per capita payment to be made to the Absentee Wyandottes and the Wyandotte Tribe of Oklahoma. In order to get a per capita payment, you must have an updated roll of both parties.

Our roll is updated and is kept as current as we can keep it, and we can update ours almost immediately. There has never been yet, and there is not now any action taken, to my knowledge, for updating the absentee rolls. So, I ask that instead of the 180 days required to file applications that this be the period of time allotted to complete the rolls for the absentee Wyandottes, and another 90 days, as indicated in the code and in the bills, to complete the payment. This will consist of 270 total days to make payment to our people.

I ask that this time limit be made and that we get the money as soon as possible for these reasons: We are a small tribe in northeastern Oklahoma; We are a poor tribe; We have plans, proposed plans in writing, which are part of this bill, for the benefit of our people. I cannot implement those plans until we get our money.

We need it for the education of our youngsters. We need it for health programs for our old people. We need it for starting a small business, if that will be one of our endeavors, and we must have money to get started in these endeavors. We want to be self-sufficient. We cannot even start without this money. We need it as soon as possible.

Thank you.

Mr. **Alexander**. Thank you very much.

I have just one question which probably can be responded to in writing. Mr. Fritz, who testified for the administration, as a personal observation, suggested that perhaps an arrangement where the tribe developed a more extensive economic plan coupled with a waiver, a limited waiver, of the Secretary's trust authority might be an alternative to the provision in this bill. The Congress is scheduled to recess this Friday and will be out for about 4 weeks, so there is probably no action that could be taken on this bill until after that time. In the interim period, if you would evaluate that suggestion and give us your views, that would be very helpful to the committee.

Mr. **Bearskin.** I will do that.

I might add, if I may, that the absentee Wyandottes, who are not a federally organized tribe, and they are not an organized group; however, I have kept them advised of all the procedures in this judgment hearing and the judgment claims case. They have verbally agreed to the provisions of this bill. I sent them a copy of it. I have been on the phone with them prior to coming here, and they agreed to the provisions of this bill. They also agreed to and supported a time limit on the update of their rolls.

Mr. **Alexander.** Thank you. We appreciate that. Thank you for making the long trip today. We appreciate your testimony.

The hearing is adjourned.

[Whereupon, at 11:59 a.m., the hearing was adjourned.]

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